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In the Supreme Court of the United States.

IN THE MATTER

OF

The Application of DANIEL GALLAGHER and FRANCIS S. REISENBERG for a Writ of Mandamus against the Honorable E. Henry Lacombe, Circuit Judge of the United States for the Second Circuit, and against the Circuit Court of the United States for the Southern District of New York.

And now come the petitioners Francis S. Reisenberg and Daniel Gallagher, by Roger Foster, their attorney and counsel; and they move, and each of them moves, for leave to file the petition for a writ of mandamus, hereto annexed; and they and each of them further move that a rule be entered and issue directing the Honorable E. Henry Lacombe, Circuit Judge of the United States for the Second Circuit and for the Southern District of New York, and directing the Circuit Court of the United States for the Southern District of New York to show cause why a writ of mandamus should not issue against them and each of them in accordance with the prayer of the same petition, and why said petitioners should not have such other and further relief in the premises as may be just and meet.

ROGER FOSTER,
Attorney and Counsel for Petitioners Francis S. Reisenberg and Daniel Gallagher.

To the Honorable Melville W. Fuller, Chief Justice of the United States, and to his Associate Justices of the Supreme Court of the United States:

The joint and several petition of Francis S. Reisenberg and of Daniel Gallagher, both of whom are residents and citizens of the Uaited States, and of the City, County and State of New York, respectfully shows:

I.—Your petitioners are, and each of them is, and at all the times herein mentioned your petitioners were, and each of them was, a creditor of the Metropolitan Street Railway Company, which is and then was a corporation organized and existing under the laws of the State of New York, for the purpose of operating street railways in the City of New York, in said State, and which is and then was a citizen of said State. Said Metropolitan Street Railway Company is not, and never has been, engaged in interstate commerce. All the lines which it has ever operated are, and at all times have been, entirely within the said City of New York in said State of New York. By a lease dated on or about February 14, 1902, said Metropolitan Street Railway Company leased to the New York City Railway Company, the entire system of street railways of said Metropolitan Street Railway Company and all street railway lines owned by and leased to said Metropolitan Street Railway Company, for the term of 999 years, from the date of said lease, in return for the payment of a rental of 7 per cent. per annum upon the existing capital stock of said Metropolitan Street Railway Company, and the payment of taxes, assessments, and rentals of lines leased to said Metropolitan Street Railway Company, and in return for a promise by said lessee to pay all judgments for damages upon claims for personal in-

juries against said lessor. Said lease further made the said lessee the attorney of the said lessor, with power to take proceedings in its name. The said New York City Railway Company is and since February, 1902, was a corporation organized and existing under the laws of the State of New York, for the purpose of operating street railways in the City of New York in said State, and a citizen of said State. Said New York City Railway Company is not and never has been engaged in interstate commerce. All the lines which it has ever operated are and at all times have been in said City of New York in said State of New York. Immediately upon the execution of said lease, said New York City Railway Company took possession of the said system of street railways of said Metropolitan Street Railway Company and of said street railway lines owned by and leased to said Metropolitan Street Railway Company, and the said New York City Railway Company remained in possession thereof until the appointment of the receivers hereinafter described.

II.—The said Metropolitan Street Railway Company is indebted to your petitioner Reisenberg in the sum of $5,000 because of personal injuries caused to him by the negligence of said street railway company, in negligently setting one of its cars in motion without notice to him while he was alighting from the same. In consequence whereof, he was damaged to said amount. On or about June 27, 1895, an action to recover damages for said injuries was brought by said petitioner Reisenberg in the Supreme Court of the State of New York against said Metropolitan Street Railway Company and is still pending undetermined. The said Metropolitan Street Railway Company is indebted to your petitioner, Daniel Gallagher, in the sum of $25,000 because of personal injuries caused to him on or about the 13th day of June, 1892; when, through the negligence of said Metropolitan Street Railway Company, he was struck by one of a

team of horses operating one of its cars and was damaged to said extent. An action to recover damages for said injuries has been brought by said petitioner Gallagher in the Supreme Court of the State of New York against said Metropolitan Street Railway Company and is still pending undetermined. Nearly all of the creditors of the said Metropolitan Street Railway Company and nearly all of the creditors of the said New York City Railway Company are and at all times herein mentioned were citizens of the State of New York.

III.—On or about September 24, 1907, a bill in equity was filed in the Clerk's office of the Circuit Court of the United States for the Southern District of New York, in which the Pennsylvania Steel Company, a corporation claiming to be organized under the laws of the State of Pennsylvania, and the Degnon Contracting Company, a corporation claiming to be organized under the Laws of the State of New Jersey, were named as complainants, and in which the said New York City Railway Company was named as defendant. The said bill in equity alleged: That the said New York City Railway Company was a citizen of the State of New York; That said defendent was indebted to the said Steel Company in the sum of $36,831.38 for rails and track material furnished; and that said defendant was indebted to the said Degnon Contracting Company in the sum of $11,173.27 for work and labor. But said bill did not allege that any judgments had been recovered by either of said complainants against said defendant; and in fact neither of said complainants had then obtained, nor has since obtained, any judgment against said defendant. Your petitioners dispute the validity and the amount of said alleged indebtedness; and they wish and pray a hearing thereupon. Said bill further alleged: That the said defendant was insolvent. "That in the course of the operation of its lines, numerous accidents have oc-

curred, in respect of which suits have been brought and are now pending, and that said suits to the number of several thousand are now upon the calendars of the courts awaiting trial, and that the defendant will be without means to meet judgments recovered in said suits." Said bill further alleged: "that the railways operated by the defendant are so numerous and extensive as to constitute practically the entire street railroad system in the County of New York." "That it is of vital importance to the people of said County of New York that said system shall continue to be operated as a whole." Said bill prayed for the following and for no other relief: (1) That the rights of the orators and of the other creditors of the defendant may be ascertained and decreed; and that the assets of said defendant be administered and marshalled, and that the rights, liens and equities of said creditors be ascertained and decreed upon respective interventions or applications of each creditor and lienor; (2) that a receiver of the property of said defendant be appointed with certain powers, which said bill specified; (3) that an injunction issue against the defendant and all persons claiming and acting by, through, or under it, and all other persons to restrain them from interfering with said receiver taking possession of said property; (4) a prayer for general relief with a prayer for an answer and the writ of subpœna. The said bill alleged that it was filed by said complainants "on their behalf and on behalf of all other creditors of New York City Railway Company, defendant, who may hereafter join in the prosecution of this suit." The said bill did not pray payment of any of the said alleged indebtedness by said defendant to either of said complainants. The allegations of said bill concerning the indebtedness of said defendant and the insolvency of said defendant, and all the allegations of facts in said bill, except the existence of said indebtedness to complainants, and the incorporation, residence and citizenship of the parties were made upon information and belief, the only per-

sons named in said bill, as giving information to either of complainants concerning any of the facts therein alleged, were unnamed officers of said defendant. The said bill was prepared at the request of the said New York City Railway Company for the purpose of procuring the appointment of a receiver of the property of said New York City Railway Company by said Circuit Court of the United States, and for the purpose of withdrawing the administration of the assets of said corporation and of its said lessor from the jurisdiction of the courts of the State of New York, and for the purpose of impeding your petitioners and the other creditors of said two railway companies in the collection of their claims, and for stock jobbing purposes, and for the purpose of preventing the Attorney General of the State of New York from interfering with and taking part in the administration of said assets, and for the purpose of impeding and preventing the Public Service Commission of the State of New York for the City of New York from making and enforcing orders compelling said defendant to improve its service and to make the same more adequate for the means of the residents of the City of New York and less dangerous to the life and health of the residents of said City of New York, and for the further purpose of impeding actions which were expected to be brought by stockholders of the said Metropolitan Street Railway Company and creditors of said Metropolitan Street Railway Company, and by said Attorney General against certain persons who had been directors and in control of said Metropolitan Street Railway Company, because of wrongful acts by them, which had depleted the treasury and wasted the funds of said Metropolitan Street Railway Company.

IV.--On the same day that said bill in equity was filed, the said New York City Railway Company filed in said clerk's office an answer. Said answer

admitted all the allegations of said bill of complaint and joined in all the prayers of said complaint and specifically prayed the appointment of a receiver on the assets of said defendant. Said answer was verified by the secretary of the said New York City Railway Company. On the same day, upon said bill and answer, without any affidavits in support of the same, except the formal affidavits of officers of the said complainants to said bill, which merely averred that they believed the allegations therein, which were made upon information and belief, and that they knew the truth of the further allegations therein contained; the Honorable E. Henry Lacombe, United States Circuit Judge for the Second Circuit, signed an order and decree, which stated that the cause came on to be heard upon the bill of complaint and on the answer therein filed, and appointed Messrs. Adrian H. Joline and Douglas Robinson temporary Receivers of the property of said defendant. Said order and decree contained the following provisions, among others: "And the defendant, said New York City Railway Company and its officers, directors, agents and employees, and all other persons claiming to act by, through or under the defendant and all other persons whomsoever are hereby enjoined from interfering in any way whatever with the possession or management of any part of the property over which the Receivers are hereby appointed or interfering in any way to prevent the discharge of their duties or their operating the same, and any other party in interest may apply for further direction.

And it is further ordered that the parties hereto show cause before this Court at the United States Post Office Building, in the City of New York, on the 7th day of October, 1907, at two o'clock in the afternoon why the said receivership should not be continued during the pendency of this suit, and upon the hearing thereon any other creditor of the defendant or other party in interest may be heard."

The said suit did not really nor substantially in-

volve a dispute or controversy properly within the jurisdiction of the said Circuit Court. There was no controversy between citizens of different States in said suit. There was no controversy of any sort therein. Said suit did not arise under the Constitution, nor under the laws, nor under a treaty of the United States. The parties to said suit were improperly and collusively made and joined as plaintiffs and defendants, for the purpose of creating a case cognizable under the Judiciary Act of 1875 and for the purpose of creating a case cognizable by the said Circuit Court of the United States. The said suit was instituted and the said appointment of said Receivers was procured by collusion between the parties to the same.

Subsequently thereto and on or about October 1, 1907, a petition in the name of the said Metropolitan Street Railway Company was presented to said United States Circuit Judge by the persons who controlled said defendant, in which said petitioner prayed that it might become a party defendant to said suit for the protection of its interests and those of its creditors: that the receivership under the bill of complaint be extended so as to embrace the interests of said petitioner in said property, and that said Receivers be directed to keep separate accounts of the lines owned by said defendant, and of such of the leased lines embraced in the petitioner's lease, as might be deemed practicable; that the rents, issues, profits and income be pledged under the orders or decrees of said court to the end that said system might be protected and preserved; with a prayer for general relief. Notice of the presentment of said petition was given by said petitioner, upon the same day that the same was presented; to; and due service of a copy of said notice and petition was admitted on the same day by; the solicitors for the complainants and by the solicitor for the defendant to said suit. Upon the same day with the consent of the parties to said suit the said United States Circuit Court Judge

made an order permitting the said petitioner, Metropolitan Street Railway Company, to be made a party defendant to said cause, extending said receivership to the properties of said petitioner railway company, appointing said Receivers receivers of the property of said petitioner, with the powers and duty prescribed by the order previously appointing them Receivers, and ordering that all persons whomsoever be enjoined from interfering in any way whatsoever with the possession or management of any part of said property for which said Receivers had been appointed or interfering in any way to prevent the discharge of their duties or their operating the same. At that time the Attorney-General of the State of New York had prepared papers for the appointment of a Receiver of said Metropolitan Street Railway Company in the Supreme Court of the State of New York. Said petitioner, Metropolitan Street Railway Company, knew of said application, although the papers had not yet been formally served upon it. Said application was made, amongst other reasons, for the purpose of defeating the application of said Attorney-General and also to further the objects of said suit, which are hereinabove set forth. Said Metropolitan Street Railway Company then had causes of action to an amount exceeding $1,000,000 against said New York City Railway Company because of the waste and misappropriation by said lessee of said leased properties.

VI.—Subsequently, on or about October 7, 1907, the said order to show cause, contained in the said order of September 24, 1907, was returned before said Judge. Your petitioners then appeared by their counsel, Roger Foster, Esq., and then and there opposed the continuance of said receivership. The said Judge then refused to hear your petitioner's counsel except as *amicus curiæ*. The attorney for said Metropolitan Street Railway Company and the attorneys for said complainants then moved for a

continuance of said receivership. Your petitioner's said counsel then charged, and complainants' counsel did not deny, that said suit was brought at the request of said defendant. The counsel for said defendant were then present in court; but neither of them opposed the motion to continue said receivership. Subsequently, on or about October 8, 1907, the said Circuit Judge handed down an opinion granting the motion to continue said receivership. In said opinion, he stated, amongst other things, as follows: "It is of course manifest that complainants and defendant were entirely in accord and arranged together that the suit should be brought to the Federal Court; and that the averments of the bill should be admitted by the answer." Subsequently, on or about October 9, 1907, a bill of equity in the name of the Morton Trust Company, which is and then was a corporation organized under the laws of the State of New York and a citizen of said State by the persons who controlled said two railway companies and said trust company. Said bill alleged that said Morton Trust Company was a mortgagee of the property of said Metropolitan Street Railway Company under a mortgage not yet due or the payments secured by which there had been no default. Said bill prayed the appointment of a receiver of said property, which was then in the hands of said receivers previously appointed as aforesaid. The said bill did not pray a foreclosure of said mortgage.

The defendants named in said bill were the said two railway companies and their said Receivers, both of which Receivers then were and still are citizens of the State of New York, and the two complainants to said original bill. Said bill correctly alleged the citizenship of said parties.

Upon the same day, October 9, 1907, an order and decree was signed by said United States Circuit Judge and filed in the Clerk's office of said Court, which order and decree continued said Receivers pending said suit and modified in certain respects,

which are immaterial to this application, the original order appointing said Receivers, but continued said injunction.

Upon the same day an order was signed by said Judge, which extended said receivership for the benefit of said Morton Trust Company.

VII.—Subsequently thereto, your petitioners duly presented to said United States Circuit Judge, their joint and several petition, duly verified on October 15, 1907, which petition prayed that leave to intervene in said suit, and that the orders granting said receiverships and injunction, be set aside, and for general relief. Subsequently thereto, on or about November 6, 1907, an order was made by said United States Circuit Judge and filed in said Clerk's office, which order denied the prayer of said petition. No final decree has been entered in said suit and the complainants and defendant to the same have postponed the entry of a final decree therein indefinitely. No decree for the administration of the assets of said defendant nor for any of the relief prayed in said bill, except a receiver and an injunction, has been made in said suit, although all allegations in said bill have been confessed, and although the said cause is ripe for such a decree. But said complainants and defendant have postponed the entry thereof indefinitely. The object of said postponement is to prevent the payment of the creditors of said defendant and to prevent the distribution of its assets and to keep the same for an indefinite length of time in the custody of said United States Circuit Court, in order that the creditors, stockholders and other persons interested in the assets of said two defendants may be thus compelled and coerced into consenting to a sacrifice of their rights and to a reorganization of the said defendants, and of the property and respective claims upon the property of the said defendants, which reorganization is desired by the persons in control of said defendants,

who are the same persons that have wrecked and injured the property of the same.

VIII.—The said Receivers and the parties to said suit threaten and are about to obtain orders from the said Court and from the Judges thereof, for the purpose of making large expenditures out of the assets of the said two defendants, which will diminish the amount payable to creditors of each of the same, and they are about to make such expenditures to the amount of about $3,000,000. The said Receivers threaten and are about, under the advice of the persons in control of the said two defendants, to stop payment of the rental due under a lease of a valuable portion of the property of the said two defendants, namely: the so-called Third Avenue Street Railway; and to separate the said Third Avenue Street Railway from the rest of the system of said defendants. Said action will be in direct opposition to the professed object of said suit.

IX.—Your petitioners are informed and believe and aver: That it has been established by the decisions of this Court and of the United States Circuit Court of Appeals, amongst others, by the following decisions: *Ex parte* Cutting, 94 U. S., 14; Jones & Laughlin's L'd *v.* Sands, 79 Fed., 913; Credits Commutation Co. *v.* U. S., 91 Fed., 570, 573; s. c., 177 U. S., 311; Toledo, St. L. & K. C. R. Co. *v.* Continental Tr. Co., 95 Fed., 497, 536, that your petitioners have no right to appeal from any of the said orders. Your petitioners, consequently, are enjoined from interfering with the assets and property of their said debtor, the Metropolitan Street Railway Company. They can take no proceedings to collect any judgment or judgments, which they or either of them may recover in said actions, except in the said Circuit Court of the United States. In the meantime, the said assets may be depleted by proceedings on the part

of said complainants and of said defendant and of said receivership, of which they will have no notice, and with which they will have no right to interfere. They have no remedy unless this Court interferes by the writ of mandamus.

Wherefore your petitioners pray and each of them prays, that a rule be made and issue from this Honorable Court, directed to the said Honorable E. Henry Lacombe, Circuit Judge of the United States for the Second Circuit, and directing the said Circuit Court of the United States for the Southern District of New York to show cause why a writ of mandamus should not issue, commanding the said Judge and the said Court, and each of them to dismiss the bill of complaint in said suit, and all proceedings therein, and to vacate said orders appointing said Receivers, and to desist from exercising any further jurisdiction in said suit, except the entry of an order dismissing said suit; or, in the alternative, such a writ commanding him to allow the intervention of your petitioners in said suit; or, in the alternative, that a writ of prohibition may issue from this Honorable Court forbidding the said Honorable Circuit Judge of the United States for the Second Circuit, and forbidding the said Circuit Court of the United States for the Southern District of New York from taking any further proceedings in said suit and from taking any further proceedings in connection with said receiverships; and for such other and further relief in the premises as shall seem just and meet, and your petitioners will ever pray, &c.

FRANCIS S. REISENBERG,
DANIEL GALLAGHER.

By ROGER FOSTER,
Attorney for Petitioners,
35 Wall St.,
New York.

ROGER FOSTER,
Of Counsel.

STATE OF NEW YORK,
County of New York,
Southern District of New York, } ss.:

FRANCIS S. REISENBERG, being duly sworn, deposes and says: I am the petitioner above named. The foregoing petition is true to the best of my knowledge, information and belief.

FRANCIS S. REISENBERG.

Sworn to before me this
7th day of November, 1907.

[NOTARIAL SEAL.] Notary Public,
N. Y. Co.
#43 Bernard Nathan
Notary Public
New York Co

In the Supreme Court of the United States.

IN THE MATTER

OF

The Application of JOSEPH KONRAD, individually and as administrator of Paul Planovsky, deceased, for a Writ of Mandamus against the Honorable E. Henry Lacombe, Circuit Judge of the United States for the Second Circuit, and against the Circuit Court of the United States for the Southern District of New York.

And now comes the petitioner, Joseph Konrad, individually and as administrator of Paul Planovsky, deceased, by Roger Foster, his attorney and counsel; and moves for leave to file the petition for a writ of mandamus, hereto annexed; and he further moves that a rule be entered and issue directing the Honorable E. Henry Lacombe, Circuit Judge of the United States for the Second Circuit and for the Southern District of New York, and directing the Circuit Court of the United States for the Southern District of New York to show cause why a writ of mandamus should not issue against them and each of them in accordance with the prayer of the same petition, and why said petitioner should not have such other and further relief in the premises as may be just and meet.

ROGER FOSTER,
Attorney and Counsel for Petitioner.

TO THE HONORABLE MELVILLE W. FULLER, CHIEF JUSTICE OF THE UNITED STATES, AND TO THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

The petition of JOSEPH KONRAD, individually and as administrator of the estate of Paul Planovsky, deceased, respectfully shows:

I.—Your petitioner is a resident of the City, County and State of New York. On or about the 9th day of October, 1906, your petitioner was duly appointed by the Surrogate's Court of the City and County of New York, a court of competent jurisdiction, administrator of the goods, chattels and credits of Paul Planovsky, who had previously died in said City, County and State, of which said Paul Planovsky was then a resident. On or about the 13th day of October, 1906, your petitioner duly qualified as such administrator, and your petitioner still is such administrator. On or about the 22d day of June, 1907, your petitioner as administrator as aforesaid filed, in the Supreme Court of the State of New York, a judgment for the sum of $8,538.94, against the New York City Railway Company, defendant, which judgment was then duly filed and entered in the office of the Clerk of the County of New York. Said judgment is still unpaid. Said defendant subsequently appealed from the said judgment to the Appellate Division of the Supreme Court of the State of New York for the First Department. Said appeal is still pending and undetermined. An undertaking to secure the payment of said judgment, in case said judgment is affirmed upon said appeal, has been filed by said defendant in the said Clerk's office with the American Surety Company to said undertaking.

Said defendant and the Metropolitan Street Railway Company are insolvent; the sufficiency of said surety is doubtful. The said defendant has contended and still contends, that the said judg-

ment was erroneously rendered, and the said defendant relies in support of said appeal upon numerous technical objections and exceptions taken during the trial of said action, including certain objections and exceptions to the admission of evidence, and to the charge and to the refusal to charge of the trial Judge, which objections and exceptions do not affect the merits of plaintiff's cause of action in the suit in which said judgment was rendered. And should the said judgment be reversed, it is unlikely that said reversal will be a decision against the merits of plaintiff's said claim. Said defendant has given no security for the payment of said claim in case said judgment is reversed and in case a new trial is ordered and in case a subsequent judgment is recovered against said defendant. The action which resulted in judgment was an action brought to recover damages for the death of the said decedent because of the negligence of said defendant. Your petitioner is also, individually, a creditor of said defendant to an amount equal to at least two hundred ($200) dollars, because of the arbitrary and illegal exaction by said defendant from your petitioner, at divers times during the past four (4) years, of additional fares upon his transfer from one car to another of said defendant at and near the junctions of Fourteenth street and Ninth avenue, and Twenty-third street and Broadway, and Eighth street and Second avenue, in the Borough of Manhattan, City, County and State of New York; and because of the liability of said defendant to him under the Statutes of the State of New York for penalties because of said action; and because of the refusal of said defendant to give him tickets entitling him to transfers at said junctions without the payment of additional fares; and because of the refusal of said defendant to give him such transfers free. Your petitioner is obliged, in the transaction of his business, daily to take transportation upon one or more of the street railroads which were in the possession of the said defendant at the time of

the appointment of the receivers herein described. For several years he has suffered and he still suffers great inconvenience and danger to his life, body and health, because of insufficient transportation facilities; including an insufficient number of cars furnished by the defendant, and because of the reckless and dangerous manner in which said cars are and have been operated.

II.—Said New York City Railway Company is, and at all the times herein mentioned was, a corporation organized under the laws of the State of New York, and engaged in the operation of a street railway system embracing all the surface street railways upon Manhattan Island in the City of New York, the possession of all of which it acquired under a lease from the Metropolitan Street Railway Company; and is not and never has been engaged in interstate nor in international commerce. Said Metropolitan Street Railway Company is and at all the times herein mentioned was, a corporation organized under the laws of the State of New York; and is not and never has been engaged in interstate nor in international commerce.

III.—On or about September 24, 1907, a bill in equity was filed in the Clerk's office of the Circuit Court of the United States for the Southern District of New York, in which the Pennsylvania Steel Company, a corporation claiming to be organized under the laws of the State of Pennsylvania, and the Degnon Contracting Company, a corporation claiming to be organized under the Laws of the State of New Jersey, were named as complainants, and in which the said New York City Railway Company was named as defendant. The said bill in equity alleged: That the said New York City Railway Company was a citizen of the State of New York; That said defendent was indebted to the said Steel Company in the sum of $36,831.38 for rails and track material furnished; and that said

defendant was indebted to the said Degnon Contracting Company in the sum of $11,173.27 for work and labor. But said bill did not allege that any judgments had been recovered by either of said complainants against said defendant; and in fact neither of said complainants had then obtained, nor has since obtained, any judgment against said defendant. Your petitioner disputes the validity and the amount of said alleged indebtedness; and he wishes and prays a hearing thereupon. Said bill further alleged: That the said defendant was insolvent. "That in the course of the operation of its lines, numerous accidents have occurred, in respect of which suits have been brought and are now pending, and that said suits to the number of several thousand are now upon the calendars of the courts awaiting trial, and that the defendant will be without means to meet judgments recovered in said suits." Said bill further alleged: "that the railways operated by the defendant are so numerous and extensive as to constitute practically the entire street railroad system in the County of New York." "That it is of vital importance to the people of said County of New York that said system shall continue to be operated as a whole." Said bill prayed for the following and for no other relief: (1) That the rights of the orators and of the other creditors of the defendant may be ascertained and decreed; and that the assets of said defendant be administered and marshalled, and that the rights, liens and equities of said creditors be ascertained and decreed upon respective interventions or applications of each creditor and lienor; (2) that a receiver of the property of said defendant be appointed with certain powers, which said bill specified; (3) that an injunction issue against the defendant and all persons claiming and acting by, through, or under it, and all other persons to restrain them from interfering with said receiver taking possession of said property; (4) a prayer for general relief with a prayer for an answer and the writ of subpœna. The said bill alleged

that it was filed by said complainants "on their behalf and on behalf of all other creditors of New York City Railway Company, defendant, who may hereafter join in the prosecution of this suit." The said bill did not pray payment of any of the said alleged indebtedness by said defendant to either of said complainants. The allegations of said bill concerning the indebtedness of said defendant and the insolvency of said defendant, and all the allegations of facts in said bill, except the existence of said indebtedness to complainants, and the incorporation, residence and citizenship of the parties were made upon information and belief, the only persons named in said bill, as giving information to either of complainants concerning any of the facts therein alleged, were unnamed officers of said defendant. The said bill was prepared at the request of the said New York City Railway Company for the purpose of procuring the appointment of a receiver of the property of said New York City Railway Company by said Circuit Court of the United States, and for the purpose of withdrawing the administration of the assets of said corporation and of its said lessor from the jurisdiction of the courts of the State of New York, and for the purpose of impeding your petitioner and the other creditors of said two railway companies in the collection of their claims, and for stock jobbing purposes, and for the purpose of preventing the Attorney General of the State of New York from interfering with and taking part in the administration of said assets, and for the purpose of impeding and preventing the Public Service Commission of the State of New York for the City of New York from making and enforcing orders compelling said defendant to improve its service and to make the same more adequate for the means of the residents of the City of New York and less dangerous to the life and health of the residents of said City of New York, and for the further purpose of impeding actions which were

expected to be brought by stockholders of the said Metropolitan Street Railway Company and creditors of said Metropolitan Street Railway Company, and by said Attorney General against certain persons who had been directors and in control of said Metropolitan Street Railway Company, because of wrongful acts by them, which had depleted the treasury and wasted the funds of said Metropolitan Street Railway Company.

IV.—On the same day that said bill in equity was filed, the said New York City Railway Company filed in said clerk's office an answer. Said answer admitted all the allegations of said bill of complaint and joined in all the prayers of said complaint and specifically prayed the appointment of a receiver on the assets of said defendant. Said answer was verified by the secretary of the said New York City Railway Company. On the same day, upon said bill and answer, without any affidavits in support of the same, except the formal affidavits of officers of the said complainants to said bill, which merely averred that they believed the allegations therein, which were made upon information and belief, and that they knew the truth of the further allegations therein contained; the Honorable E. Henry Lacombe, United States Circuit Judge for the Second Circuit, signed an order and decree, which stated that the cause came on to be heard upon the bill of complaint and on the answer therein filed, and appointed Messrs. Adrian H. Joline and Douglas Robinson temporary Receivers of the property of said defendant. Said order and decree contained the following provisions, among others: "And the defendant, said New York City Railway Company and its officers, directors, agents and employees, and all other persons claiming to act by, through or under the defendant and all other persons whomsoever are hereby enjoined from interfering in any way whatever with the possession or management of any part of the property over which

the Receivers are hereby appointed or interfering in any way to prevent the discharge of their duties or their operating the same, and any other party in interest may apply for further direction.

And it is further ordered that the parties hereto show cause before this Court at the United States Post Office Building, in the City of New York, on the 7th day of October, 1907, at two o'clock in the afternoon why the said receivership should not be continued during the pendency of this suit, and upon the hearing thereon any other creditor of the defendant or other party in interest may be heard."

The said suit did not really nor substantially involve a dispute or controversy properly within the jurisdiction of the said Circuit Court. There was no controversy between citizens of different States in said suit. There was no controversy of any sort therein. Said suit did not arise under the Constitution, nor under the laws, nor under a treaty of the United States. The parties to said suit were improperly and collusively made and joined as plaintiffs and defendants, for the purpose of creating a case cognizable under the Judiciary Act of 1875 and for the purpose of creating a case cognizable by the said Circuit Court of the United States. The said suit was instituted and the said appointment of said Receivers was procured by collusion between the parties to the same.

Subsequently thereto and on or about October 1, 1907, a petition in the name of the said Metropolitan Street Railway Company was presented to said United States Circuit Judge by the persons who controlled said defendant, in which said petitioner prayed that it might become a party defendant to said suit for the protection of its interests and those of its creditors: that the receivership under the bill of complaint be extended so as to embrace the interests of said petitioner in said property, and that said Receivers be directed to keep separate accounts of the lines owned by said defendant, and of such of the leased lines embraced in

the petitioner's lease, as might be deemed practicable; that the rents, issues, profits and income be pledged under the orders or decrees of said court to the end that said system might be protected and preserved; with a prayer for general relief. Notice of the presentment of said petition was given by said petitioner, upon the same day that the same was presented; to; and due service of a copy of said notice and petition was admitted on the same day by; the solicitors for the complainants and by the solicitor for the defendant to said suit. Upon the same day with the consent of the parties to said suit the said United States Circuit Court Judge made an order permitting the said petitioner, Metropolitan Street Railway Company, to be made a party defendant to said cause, extending said receivership to the properties of said petitioner railway company, appointing said Receivers receivers of the property of said petitioner, with the powers and duty prescribed by the order previously appointing them Receivers, and ordering that all persons whomsoever be enjoined from interfering in any way whatsoever with the possession or management of any part of said property for which said Receivers had been appointed or interfering in any way to prevent the discharge of their duties or their operating the same. At that time the Attorney-General of the State of New York had prepared papers for the appointment of a Receiver of said Metropolitan Street Railway Company in the Supreme Court of the State of New York. Said petitioner, Metropolitan Street Railway Company, knew of said application, although the papers had not yet been formally served upon it. Said application was made, amongst other reasons, for the purpose of defeating the application of said Attorney-General and also to further the objects of said suit, which are hereinabove set forth. Said Metropolitan Street Railway Company then had causes of action to an amount exceeding $1,000,000 against said New York City Railway Company because of

the waste and misappropriation by said lessee of said leased properties.

VI.—Subsequently, on or about October 7, 1907, the said order to show cause, contained in the said order of September 24, 1907, was returned before said Judge. Your petitioner then appeared by his counsel, Roger Foster, Esq., and then and there opposed the continuance of said receivership. The said Judge then refused to hear your petitioner's counsel except as *amicus curiæ*. The attorney for said Metropolitan Street Railway Company and the attorneys for said complainants then moved for a continuance of said receivership. Your petitioner's said counsel then charged, and complainants' counsel did not deny, that said suit was brought at the request of said defendant. The counsel for said defendant were then present in court; but neither of them opposed the motion to continue said receivership. Subsequently, on or about October 8, 1907, the said Circuit Judge handed down an opinion granting the motion to continue said receivership. In said opinion, he stated, amongst other things, as follows: "It is of course manifest that complainants and defendant were entirely in accord and arranged together that the suit should be brought to the Federal Court; and that the averments of the bill should be admitted by the answer." Subsequently, on or about October 9, 1907, a bill of equity in the name of the Morton Trust Company, which is and then was a corporation organized under the laws of the State of New York and a citizen of said State by the persons who controlled said two railway companies and said trust company. Said bill alleged that said Morton Trust Company was a mortgagee of the property of said Metropolitan Street Railway Company under a mortgage not yet due or the payments secured by which there had been no default. Said bill prayed the appointment of a receiver of said property, which was then in the hands of said receivers previously appointed as

aforesaid. The said bill did not pray a foreclosure of said mortgage.

The defendants named in said bill were the said two railway companies and their said Receivers, both of which Receivers then were and still are citizens of the State of New York, and the two complainants to said original bill. Said bill correctly alleged the citizenship of said parties.

Upon the same day, October 9, 1907, an order and decree was signed by said United States Circuit Judge and filed in the Clerk's office of said Court, which order and decree continued said Receivers pending said suit and modified in certain respects, which are immaterial to this application, the original order appointing said Receivers, but continued said injunction.

Upon the same day an order was signed by said Judge, which extended said receivership for the benefit of said Morton Trust Company.

VII.—Subsequently thereto, your petitioner duly presented to said United States Circuit Judge, his joint and several petition, duly verified on October 15, 1907, which petition prayed that leave to intervene in said suit, and that the orders granting said receiverships and injunction, be set aside, and for general relief. Subsequently thereto, on or about November 6, 1907, an order was made by said United States Circuit Judge and filed in said Clerk's office, which order denied the prayer of said petition. No final decree has been entered in said suit and the complainants and defendant to the same have postponed the entry of a final decree therein indefinitely. No decree for the administration of the assets of said defendant nor for any of the relief prayed in said bill, except a receiver and an injunction, has been made in said suit, although all allegations in said bill have been confessed, and although the said cause is ripe for such a decree. But said complainants and defendant have postponed the entry thereof in-

definitely. The object of said postponement is to prevent the payment of the creditors of said defendant and to prevent the distribution of its assets and to keep the same for an indefinite length of time in the custody of said United States Circuit Court, in order that the creditors, stockholders and other persons interested in the assets of said two defendants may be thus compelled and coerced into consenting to a sacrifice of their rights and to a reorganization of the said defendants, and of the property and respective claims upon the property of the said defendants, which reorganization is desired by the persons in control of said defendants, who are the same persons that have wrecked and injured the property of the same.

VIII.—The said Receivers and the parties to said suit threaten and are about to obtain orders from the said Court and from the Judges thereof, for the purpose of making large expenditures out of the assets of the said two defendants, which will diminish the amount payable to creditors of each of the same, and they are about to make such expenditures to the amount of about $3,000,000. The said Receivers threaten and are about, under the advice of the persons in control of the said two defendants, to stop payment of the rental due under a lease of a valuable portion of the property of the said two defendants, namely: the so-called Third Avenue Street Railway; and to separate the said Third Avenue Street Railway from the rest of the system of said defendants. Said action will be in direct opposition to the professed object of said suit.

IX.—Your petitioner is informed and believes and avers: That it has been established by the decisions of this Court and of the United States Circuit Court of Appeals, amongst others, by the following decisions: *Ex parte* Cutting, 94 U. S., 14; Jones & Laughlin's L'd *v.* Sands, 79 Fed., 913; Credits Com-

mutation Co. *v.* U. S., 91 Fed., 570, 573; s. c., 177 U. S., 311; Toledo, St. L. & K. C. R. Co. *v.* Continental Tr. Co., 95 Fed., 497, 536, that your petitioner has no right to appeal from any of the said orders. Your petitioner, consequently, is enjoined from interfering with the assets and property of his said debtor, the Metropolitan Street Railway Company. He can take no proceedings to collect any judgment or judgments, which he may recover in said actions, except in the said Circuit Court of the United States. In the meantime, the said assets may be depleted by proceedings on the part of said complainants and of said defendant and of said receivership, of which he will have no notice, and with which he will have no right to interfere. He has no remedy unless this Court interferes by the writ of mandamus.

Wherefore your petitioner prays, that a rule be made and issue from this Honorable Court, directed to the said Honorable E. Henry Lacombe, Circuit Judge of the United States for the Second Circuit, and directing the said Circuit Court of the United States for the Southern District of New York to show cause why a writ of mandamus should not issue, commanding the said Judge and the said Court, and each of them, to dismiss the bill of complainant in said suit, and all proceedings therein, and to vacate said orders appointing said Receivers, and to vacate said injunctions, and to desist from exercising any further jurisdiction in said suit, except the entry of an order dismissing said suit; or, in the alternative, such a writ commanding him to allow the intervention of your petitioner in said suit; or, in the alternative, that a writ of prohibition may issue from this Honorable Court forbidding the said Honorable Circuit Judge of the United States for the Second Circuit, and forbidding the said Circuit Court of the United States for the Southern District of New York from taking any further proceedings in connection with said receiver-

ships; and for such other and further relief in the premises as shall seem just and meet, and your petitioner will ever pray, &c.

JOSEPH KONRAD,
Individually, and as Administrator of Paul Planovsky, deceased,
by ROGER FOSTER,
Attorney for Petitioner,
35 Wall Street,
New York.

ROGER FOSTER,
Of Counsel.

STATE OF NEW YORK,
County of New York,
Southern District of New York, } ss.:

JOSEPH KONRAD, being duly sworn, deposes and says: I am the petitioner above named. The foregoing petition is true to the best of my knowledge, information and belief.

JOSEPH KONRAD.

Sworn to before me this
day of November, 1907.

[NOTARIAL SEAL.]

Notary Public,
N. Y. Co.

Supreme Court of the United States.

IN THE MATTER

OF

The Applications of DANIEL GALLAGHER and FRANCIS S. REISENBERG and JOSEPH KONRAD for a Writ of Mandamus against the Honorable E. Henry Lacombe, Circuit Judge of the United States for the Second Circuit, and against the Circuit Court of the United States for the Southern District of New York.

MEMORANDUM FOR GALLAGHER AND REISENBERG AND KONRAD IN SUPPORT OF THEIR MOTION FOR LEAVE TO FILE PETITION FOR MANDAMUS AND IN SUPPORT OF THEIR APPLICATION FOR THAT WRIT.

This is a motion for leave to file a petition for the writ of mandamus directing Judge Lacombe, of the Second Circuit and the Circuit Court of the United States for the Southern District of New York, to vacate orders appointing receivers of the New York City Railway Company and the Metropolitan Street Railway Company, both corporations of the State of New York; to permit the distribution of the assets of those two companies by the courts of that

State in pursuance of its corporation laws and insolvent laws; and to dissolve injunctions forbidding creditors of those two companies from interfering with the assets of the same, and to dismiss the suit for want of jurisdiction, or for alternative relief.

The petitioners Reisenberg and Gallagher are creditors of the Metropolitan Street Railway Company, holding claims for personal injuries upon which suits are pending in the State court. Their claims are not yet reduced to judgment; but actions upon them are still pending. Konrad, whose petition is filed with them, is a judgment creditor of the New York City Railway Company. His judgment has been secured pending an appeal by the bond of the American Surety Company; but the sufficiency of that surety, since the failure of the New York City Railway Company, is doubtful. The New York City Railway Company was at the time of the commencement of the proceedings in question in the possession of the entire street railway system upon Manhattan Island under a lease from the Metropolitan Street Railway Company. The latter was the owner, lessee, or controller through stock ownership, of all these railroads. The lease made the lessee the attorney of the lessor, with power to institute proceedings in its name. The lessor covenanted to pay as rent an annual dividend of 7 per cent. upon the lessor's stock, besides taxes, and also to pay and assume all judgments for personal injuries that might subsequently be recovered against the lessor. Neither of these corporations is engaged in interstate commerce. Proceedings were pending before the Public Service Commission of the City of New York, which have disclosed large liabilties on the part of the directors and other persons in control of said two railway companies, and actions, on the part of the Attorney-General of the State of New York, and also on the part of creditors and stockholders, to enforce those liabilities, were anticipated. Proceedings were also pending before the Public Service Commission for the City of New York, State of New York,

under Chapter 429 of the Laws of 1907, to compel those railway companies to afford more adequate and less dangerous service, their present condition being a public scandal. The Attorney-General of the State of New York was known to be preparing papers to apply in a State court for a Receiver of the Metropolitan Street Railway Company. In order to prevent and impede all these proceedings, and to promote stock jobbing, and for other ulterior purposes, the persons in control of those two railway companies conceived the scheme of procuring the appointment of receivers by the Federal Courts, where the enforcement of the orders of the Public Service Commission could be delayed, if not altogether blocked; and where they hope to impede and delay, if they failed to defeat, the collection of these claims against them. For that reason they procured two contract creditors of the New York City Railway Company, one a New Jersey, and the other a Pennsylvania corporation, claiming unsecured indebtedness for material sold and delivered and services performed, neither of which is a judgment creditor, to institute a suit in the Circuit Court of the United States for the Southern District of New York, praying the appointment of a receiver of the New York City Railway Company and an administration of its assets. All the allegations in the bill concerning the insolvency of the defendent and the other factswhich it was claimed justified the appointment of a receiver were made upon information and belief, with no designation of any of the informants, except in one instance, the officers of the defendant, who were not named. Upon the same day, an answer, prepared before the bill was filed, was also filed on the part of this defendant. That answer admitted all the allegations of the bill and joined in the prayer for the appointment of a receiver and for the other relief prayed in the bill. Upon the same day on the consent of the parties, Judge Lacombe made an order appointing two receivers of the defendant,

enjoining all creditors, including these petitioners, from interfering with defendant's property and directing all persons interested to show cause why the receivership should not be continued. Although the charge was repeatedly made in open Court, it has never been denied by the counsel for the complainants and for the defendant, that the bill was filed and the application for the receivers made at the request of the defendant's officers. In his opinion continuing the receivership, Judge Lacombe said as follows: "*It is, of course, manifest that complainants and defendant were entirely in accord and arranged together that the suit should be brought to the Federal Court and that the averments of the bill should be admitted by the answer.*"

A week later, after papers had been prepared by the Attorney-General of the State of New York to procure the appointment of a receiver of the Metropolitan Street Railway Company, the lessor, by the State Supreme Court; the persons in control of that lessor presented a petition, service of which, with a notice of its presentment, was on the same day admitted by the solicitors for both parties to the suit, and on that day upon said petition Judge Lacombe appointed the same persons receivers of the Metropolitan Street Railway Company, although the interests of the lessor and lessee were evidently diametrically opposed and the receivers were thereby placed in an inconsistent position. That order enjoined all creditors of the Metropolitan Street Railway Company, including these petitioners, from interfering with any of its assets. Upon the return of the order to show cause, these petitioners appeared by their counsel and asked to be heard in opposition to the continuance of the receivership. Judge Lacombe denied them the right to a hearing; but permitted their counsel to be heard as *amicus curiæ*. Three days later he entered an order continuing the receivership, although modifying the original order in some particulars. Upon that same day a bill in equity was filed by the Morton

Trust Company, a mortgagor of the Metropolitan Street Railway Company, praying *not* a foreclosure of the mortgage, which was not yet due, and upon which no default had been made, but merely praying a receivership. The defendants to that suit were not citizens of a different State from the complainant, which was a citizen of New York. They were the mortgagee and its lessee, two New York Street Railway Companies, their receivers, who are citizens of New York, and the complainants to the original suit. Thereupon, Judge Lacombe signed an order continuing the receivership for the benefit of the Morton Trust Company. There was no need of the entry of such an order for the benefit of the Morton Trust Company as long as the property was already in the hands of receivers appointed by a Court. There was no ground for a bill *quia timet*. The extension of the order for the benefit of the Morton Trust Company did not strengthen that company's position. The clear and only object of the suit was an attempt to strengthen the jurisdiction of the Court, which had been attacked.

Although the allegations in the bill have been confessed, the complainants have refused to enter a decree for a general administration of the assets of the defendant or for any other relief, except a receivership and injunction. They are postponing this indefinitely for the evident purpose of coercing the other creditors, who are forbidden to intervene and must stand idle, unless this Court interferes, while the property is incumbered by the issue of receiver's certificates and the expenditure of $3,000,000, which the receivers propose to pay out of the corporate funds for so-called betterments, and until such creditors and the stockholders of the two companies consent to a reorganization upon such terms as the debtor elects to offer.

After Judge Lacombe had denied them leave to be heard upon the return day of the order to show cause, the petitioners Reisenberg, Gallagher and

Konrad duly presented petitions of interventions, with a motion that the receiverships and injunctions be vacated. Judge Lacombe denied their petitions and motions. Since they have no remedy by appeal, not having been allowed to intervene, and they have been denied a hearing, they appeal to this Court for an opportunity to review these orders, which prevent their asserting their rights against the property of their respective debtors.

I.

The petitioners are entitled to the remedy by mandamus.

Otherwise, they will be enjoined from proceeding in their suits and collecting their claims without a hearing upon a motion to dissolve the injunction, and without any right to review the injunction order and the subsequent order continuing the same.

(*a.*) There are two fundamentals of the common law, which are essentials of that due process of law which is guaranteed by the Constitution. Where there is a right there is a remedy (*Ashby* v. *White*, 1 Salkeld, 19). No person can be denied a hearing before he is prevented from asserting a claim of right (*Pennoyer* v. *Neff*, *95 U. S.*, *734*).

The petitioners, Gallagher and Reisenberg, are creditors of the Metropolitan Street Railway Company, which is a corporation created by the laws of their own State. Konrad is a judgment creditor of the New York City Railway Company, also a New York corporation and the lessee of the other company. They have the right to use all lawful writs and legal remedies by attachment, execution, sequestration and otherwise in the courts of their own State in order to protect their rights and en-

force their claims. By the New York Statute (Code, C. P., § 1782,) they have a right to sue the directors who have wasted the corporate assets. By agreement between their debtor and two alleged creditors of the New York City Railway Company, whose claims they dispute, but are not allowed to contest, they have been enjoined from asserting their own rights in any court.

They have even been denied a hearing upon a motion to dissolve the injunction. They must wait forever quiescent and helpless until their debtor and his alleged creditors are willing that the remaining assets be administered. And meanwhile they are denied a hearing upon consent orders for the depletion of those assets by expenditures of millions of dollars and the creation of liens superior to theirs by the issue of creditor's certificates; which, although the Circuit Court exercises its best judgment in permitting, the Judge is thus deprived of the benefit of any advice except from those who are interested in deceiving him.

(*b.*) That intervenors have no right of appeal, except possibly in the case of an intervention after judgment upon an application to share in a fund in court; and that they never have a right to appeal from an order denying their right to intervene and defend a suit; is well settled (*ex parte Cutting*, 94 U. S., 14; *Jones & Laughlin's L'd.* v. *Sands*, 79 Fed., 913. *Credits Commutation Co.* v. *U. S.*, 91 Fed., 570, 573; S. C., 177 U. S., 311; *Toledo, St. L. & K. C. R. Co.* v. *Continental Tr. Co.*, (C. C. A.) 95 Fed., 497, 536).

If they attack this judgment collaterally, they cannot object because of a failure of the requisite difference of citizenship between parties to a controversy in the same (*Kempe's Lessee* v. *Kennedy*, 5 Cranch, 173, 185; *Skillern's Ex'rs* v. *May's Ex'rs*, 6 Cranch, 267; *Cameron* v. *McRoberts*, 3 Wheat., 591; *Des Moines Nav. Co.* v. *Iowa H. Co.*, 123 U. S., 552, 557, 559; *Dowell* v. *Applegate*, 152 U. S., 327,

337-341; *Pullman's P. C. Co.* v. *Washburn*, 66 Fed., 790).

It has been held in proceedings to enforce injunctions against strikers and in other cases that upon an application to punish a stranger to a suit for contempt in disobedience to an order therein made he cannot show that the Federal Court had no jurisdiction because of a lack of the requisite difference of citizenship (*Ex parte Richards*, 117 Fed., 658; *In re Lennon*, 166 U. S., 548; *Conkling Co.* v. *Russell*, 111 Fed., 417).

In *Hollins* v. *Brierfield Coal & Iron Co.*, 150 U. S., 371; it was expressly held, that a creditor, who had not obtained a judgment with execution returned unsatisfied, could not file a bill in equity to set aside a judgment appointing a receiver on the ground that the plaintiff therein was not a judgment creditor.

If Reisenberg and Gallagher are obliged to wait until they have obtained judgments, the Court, under the authority of Konrad's case, will deny them their motion for leave to intervene. Moreover, by that time, the $3,000,000, which the petition charges the receivers are about to expend out of the assets of the defendant will be gone. Receivers' certificates will as is usual be issued. It may be that, as has not too infrequently happened, the property may sell for not enough to pay the receivers' certificates. It has been held, that in a case of receivers' certificates, all parties claiming prior liens to the plaintiff must assert their rights and move to set aside the same as soon as they hear of the intention to issue them, although they are not parties to the suit.

Union Tr. Co. v. *Ill. Midland Ry. Co.*, 117 U. S., 434; *Central Tr. Co.* v. *Marietta & N. G. R. Co.* (C. C. A.), 75 Fed., 193; s. c, 75 Fed., 209.

If we are to be estopped to object to these receivers' certificates after their issue, we must be entitled to a hearing before an order granting the same

and to a review of such order. If we are not parties to the suit we cannot ascertain when an order is entered authorizing such certificates.

The duty to dismiss the proceedings is statutory. The facts showing, that there is no controversy and consequently no jurisdiction, have been found by the Judge and are not disputed. There is no room for the exercise by the Circuit Court of judicial judgment or discretion. That this Court has jurisdiction to issue the appropriate writ in a case like this is settled by *ex parte Wisner*, 203 U. S., 449; *U. S.* v. *Severens*, 71 Fed., 768; 18 C. C. A., 314.

II.

The entire proceedings are void for want of jurisdiction, and it was the duty of the Circuit Judge to dismiss the same as soon as that matter was called to his attention.

The Judiciary Act of 1875, which is still in force, provides that "if, in any suit commenced in a Cir-
"cuit Court or removed from a State court to a
"Circuit Court of the United States, it shall appear
"to the satisfaction of said Circuit Court, at any
"time after such suit has been brought or removed
"thereto, that such suit does *not really and sub-*
"*stantially involve a dispute or controversy prop-*
"*erly within the jurisdiction of said Circuit Court*,
"or that the parties to said suit have been improp-
"erly or collusively made or joined, either as plain-
"tiffs or defendants, for the purpose of creating a
"case cognizable or removable under this act, the
"said Circuit Court shall proceed no further
"therein, but shall dismiss the suit or remand it to
"the Court from which it was removed, as justice

"may require, and shall make such order as to "costs as shall be just" (Act of March 3, 1875, Ch. 137, Sec. 5, 18 St. at L., 472).

It has been held, that it is the duty of the Court to dismiss such a case upon its own motion as soon as it discovers its want of jurisdiction or the improper or collusive joinder (*Williams* v. *Nottawa*, 104 U. S., 209; *Hartog* v. *Memory*, 116 U. S., 588). In this case it clearly appeared that there was no controversy between citizens of different States. There was no controversy of any sort. The complainants did not pray the payment of their respective claims. They merely prayed a receivership, coupled with a general administration of the assets, which general administration they have refused to enter a decree directing.

There can be no controversy between the parties when the defendant has requested the plaintiff to bring the case. Moreover, there can be no matter in dispute involved when there is no dispute between the parties. If this were an action at common law, in which the plaintiffs sought judgment for their claims, and the defendant made default, it might be that the Court could have taken jurisdiction; but not even then, when it was by consent. The proceeding, however, was not an action at common law; but a bill in equity for the appointment of a receiver.

Not having reduced their claims to judgment, they are entitled to none of the relief prayed in the bill except by the defendant's consent.

(a.) As said by Mr. Justice Holmes in *Dawson* v. *Columbia Trust Co.*, 197 U. S., 178, 181: "When "the arrangement of the parties is merely a con- "trivance between friends for the purpose of "founding a jurisdiction, which otherwise would "not exist, the device cannot be allowed to suc- "ceed."

It will be remembered that there is in the record before the Court no evidence of the facts which it is

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claimed justify a receivership. They are sworn to upon information and belief by the plaintiffs. They are admitted; but their truth not sworn to in the answer of the defendant.

The authorities recognize a distinction between "matter in dispute" and "matter in demand."

Hilton v. *Dickinson*, 108 U. S., 165, 174: "When "it is shown that the sum demanded is not the real "matter in dispute, the sum shown, and not the "sum demanded, will prevail."

May v. *Jarvis-Lincoln-Morgan Trust Co.*, 128 Mo., 447, 449, 40 S. W., 122: "To determine 'the amount "in dispute,' we should look at the entire record. "Jurisdiction does not depend upon the amount "claimed; but upon the real amount in dispute."

Lozano v. *Wehmer*, 22 Fed., 755, 757, holds, that jurisdiction can only be maintained when "the "complaint or declaration alleges a claim within "the jurisdiction of the Court, and the trial develops "a substantial controversy or dispute over such "claim." There, plaintiff claimed more than the jurisdictional amount; but admitted before trial payments, reducing the amount of recovery below that sum.

It is well settled that there can be no controversy nor matter in dispute if both the parties are agreed.

Gudger v. *Western N. C. R. Co.*, 21 Fed., 81, 84; Dick, *J.*: "To constitute a controversy in an action "at law, there must be an allegation on one side "and a denial on the other, making an issue of fact "or an issue of law."

Keith v. *Levi*, 2 Fed., 743, 745; McCrary, *J.*: "Where the matter is alleged by the plaintiff and "admitted by the defendant, there is no contro-"versy, no dispute."

This Court has repeatedly held that there was no controversy between citizens of different States, when one of two defendants did not dispute the plaintiff's prayer for relief; and in determining the question, the parties have been aligned upon the side of the controversy where they properly belonged,

irrespective of their position upon the record (*Hawes* v. *Oakland*, 104 U. S., 450; *Dawson* v. *Columbia Trust Co.*, 197 U. S., 178; *Cashman* v. *Amador & S. Canal Co.*, 118 U. S., 58).

There can be no difference in principle between such cases and this, where there is but one defendant, and he is in fact on the plaintiff's side and has requested the suit to be brought and formally joins in the prayer for relief.

If the complainants sought the payment of their respective claims by judgments at common law, which are the only justiciable demands that they can possess, it might be argued that they had justiciable demands, although then the suit would be multifarious because of a misjoinder of distinct claims, which required independent proof and distinct defenses, if it appeared that the suit was brought *in invitum* against an unwilling party. But if such an action were brought as here, at the defendant's request, there could be no controversy nor matter in dispute. There can be no controversy unless this suit is brought *in invitum* against an unwilling defendant, that is, one who does not consent to the judgment. This seems to be truism.

(*b.*) There was collusion between the parties.

Collusion does not necessarily imply fraud.

The word is derived from the Latin *co* and *ludo*. It signifies a playing together of the parties.

It has been held by this Court in *Louisville Trust Co.* v. *Louisville, New Albany & Chicago Ry. Co.*, 174 U. S., 674, 677, 687, 689 (where the petitioner was allowed to intervene, but the subsequent relief sought by him was denied), that the delay of the plaintiff in entering a decree for the administration and marshalling of the assets of the defendant, as prayed in the bill, the defendant's confession of the bill and consent to the appointment of a receiver on the same day that the bill was filed—both of which facts exist here—were evidence of collusion.

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"A suit is said to be 'collusive' when brought by "seemingly adverse parties under secret agreement "and co-operation with a view to have some legal "question decided which is not involved in a real "controversy between them."

Texas & P. R. Co. v. *Gay*, 26 S. W., 599, 612; 86 Tex., 571; 25 L. R. A., 52.

"Collusion, to constitute relievable fraud in an "action to enjoin the collection of a judgment on "the ground that it was recovered against a city by "the collusion of its officers, does not require neces- "sarily any express agreement between the officers "and the claimant to aid the latter to obtain his "judgment, or any specific intent to injure. Utter "failure of duty upon the part of such officers to "defend against a known void claim, or one which "they have good reason to believe is void, from a "desire to co-operate with the plaintiff to enable "him to obtain an advantage over the municipality, "constitutes guilty collusion within the meaning of "the rule rendering a judgment open to attack in "equity by the person whose interests would other- "wise be sacrificed."

Balch v. *Beach* (Wis.), 95 N. W., 132, 137.

(c.) The learned Judge who granted these orders was misled by the analogy of certain decisions by the inferior Federal courts upon applications for the appointment of receivers of railway companies engaged in interstate commerce; where the bills expressly alleged that the operation of the railways would be prevented by the levy of attachments and executions or other writs, and interstate commerce thus impeded unless receivers were appointed. Such cases manifestly arose under the Constitution and laws of the United States.

As said in *Mercantile Tr. Co.* v. *Atlantic & P. R. Co.*, 70 Fed., 518, 524, they were cases of "property constituting a link in a great continental railway." See also *In re* Lennon, 166 U. S., 548, 553.

The Federal courts consequently had jurisdiction of the same irrespective of the citizenship of the parties. There was a "case" arising under the Constitution of the United States; although there may not have been an actual "controversy" between the parties. In cases arising under the Constitution or laws of the United States, the Federal courts may interfere, although no actual controversy exists. The Constitution as well as the judiciary acts recognize this distinction. Those decisions are far different from the present case, where the railway companies are not engaged in interstate commerce. Consequently, those decisions, which never been approved by this Court, are not in point. He was also misled by a dictum in *Hollis* v. *Brierfield Coal & Lumber Co*, 150 U. S., 371, 380. There, however, all that was decided was that an order appointing a receiver could not collaterally be attacked because the complainant was a contract creditor who had not obtained judgment with execution unsatisfied. Even then, this Court expressly excepted a case where the receiver was appointed on consent.

The opinion on this point reads as follows: "Sup-
" pose the corporation and other defendants had
" made no defense, and, *without expressly consent-*
" *ing* had made no objection to the appointment of
" a receiver and the subsequent distribution of the
" assets of the corporation among its creditors; it
" cannot be doubted that a final decree providing
" for a settlement of the affairs of the corporation
" and a distribution among creditors could not be
" challenged on the ground of a want of jurisdic-
" tion in the Court."

(*d.*) There was not the slightest justification for the extension of the receivership so as to reinclude the assets of the Metropolitan Street Railway Company; nor for the joinder of that company as a party to the suit. All the assets of that corporation, except its causes of action against its lessee, the

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directors of both companies and the other persons, who had misappropriated and wasted its property, were transferred by the lease to the New York City Railway Company. Those assets were, consequently, already under the protection of the Court. The only object of the order extending the receivership over the property of the Metropolitan Street Railway Company was to head off all actions by the State Attorney General, the stockholders and creditors of the lessors, that might be brought to compel the lessee and the officers and directors of both parties to the lease to account for the waste of the lessor's property. An action for that purpose, praying a receiver, by the Attorney General was in the course of preparation. Moreover, the Receivers could not consistently represent the hostile interests of the lessor and the lessee.

In cases where trustees represented conflicting interests, the Courts have always been accustomed to allow interventions.

Farmers' L. & Tr. Co. v. *Nor. Pac. R. Co.*, 66 Fed., 169; *Farmers' L. & Tr. Co.* v. *Cape Fear & Y. V. Ry. Co.*, 71 Fed., 38; *Grand Tr. Ry. Co.* v. *Central Vt. Ry. Co.*, 88 Fed., 629; *Fowler* v. *Jarvis-Conklin M. Tr. Co.*, 64 Fed., 279; *Hamlin* v. *Toledo, St. L. & K. C. R. Co.*, 78 Fed., 664, 672; *Jones on Corporate Bonds*, § 338.

(c.) The collusive bill in equity filed by the Morton Trust Company, and the proceedings thereon, do not strengthen the jurisdiction. That was in its nature a cross-bill, although filed in the form of a bill that was original. The relief which it sought, if it could be properly granted at all, could only be decreed upon a cross-bill (*Mercantile Trust Co.* v. *Atlantic & P. R. Co.*, 70 Fed., 518).

It did not seek a forelosure of the mortgage. It could not do so; since there had been no default. It merely prayed the appointment of a receiver for the benefit of the mortgagee and the complainant was

content with an order extending the receivership for its benefit. It was equally protected before as well as after such receivership. The whole device was a transparent pretense for adding some new color to the weak position of the receivers previously appointed. That suit is entirely ancillary in its nature. The only ground of Federal jurisdiction is that two of the parties to that suit are the receivers already appointed, who are, however, citizens of the same State as the Trust Company. There is no difference of citizenship at all. Those receivers are unnecessary parties. There can be no possible propriety in making them parties defendant to a suit to extend their functions, not over other property, but merely for the benefit of a third person; an order which we believe was unprecedented. Upon the dismissal of the receivers to the suit or upon the dismissal of the original suit and a vacation of the receivership, the only ground of Federal jurisdiction will lapse; and the suit must be dismissed with leave to the mortgagee to seek those remedies to which it may be entitled in a State court. (*Hamblin* v. *Chicago, B. & Q. R. Co.*, 43 Fed., 401; *Larrowe-Loisette Co.* v. *O'Loughlin*, 88 Fed., 896; *Elgin National Watch Co.* v. *Illinois Watch Co.*, 179 U. S., 665, 677; *Peoples' G. L. & Coke Co.* v. *Chicago*, 114 Fed., 384, 388; *Mercantile Trust Co.* v. *Collins, Park & Belt R. & D. Co.*, 107 Fed., 762, 765.)

Should the original bill be dismissed, this proceeding, like that by the Metropolitan Street Railway Company, "must follow the fate of the original bill."

Mr. Justice Field in *Dows* v. *Chicago*, 11 Wallace, 108, 112; *Frost* v. *DeVallo*, 1 Wallace, 5, 14; *Blewitt* v. *Blewitt*, (Mississippi), 12 Southern Rep., 249; *Stainback* v. *Junk Bros. L. & Mfg. Co.*, 98 Tenn., 306, 39 Southwestern, 530; *Richman* v. *Donnell*, 53 N. J. Eq., 32; *U. S.* v. *California & Oregon Line Co.*, 192 U. S., 355, 360. They all hang on the same peg.

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(*f.*) If this Court does not interfere, the consequence will be to permit the Federal Circuit Courts throughout the country to take upon themselves the administration of the assets of all insolvent corporations, which Congress, by excepting them from the provisions of the Bankruptcy Law, determined to leave to the administration of the State courts. All that will be necessary will be the procurement of a friendly creditor in another State to institute another suit. Such a one can always be procured or manufactured by the assignment of the claim of a domestic friend. Thereupon, a Receiver may be appointed as here; the corporation and the plaintiff can refuse to proceed further in the suit. All other creditors will be held at bay. They will not be allowed to intervene. They will be enjoined from levying attachments or executions upon the property of their debtor. They can thus be coerced into a settlement of their claims upon such terms as the debtor may elect to offer. *Proof of insolvency of the debtor under the decision in this case is not required.* It may be perfectly solvent and yet be able to scale down its indebtedness and readjust the same by repudiation of a part of its honest debts through these tactics.

We believe that such proceedings are in violation of the Constitution of the United States.

Farmers' Loan & Trust Co. v. *Toledo & S. H. R. Co.* (Young, Intervenor), 43 Fed., 223, 224, 225, arose upon a petition for intervention in a foreclosure suit by a judgment creditor. Severens, *J.*: "Young complains that the present suit is 'collu- "sive, and is designed to prevent his enforcing "collection of the amount decreed in his favor by "the Supreme Court.' * * * In my opinion the "Court would assert its dignity with a *needlessly* "*high hand* if it rejected an application to come in "and prevent the Court from being made the agent "of wrong by parties acting collusively, upon "purely artificial reasons. If what Young alleges "is true, the Court, with only the present parties

" on the record, would find no other way than to go " on to decree a sale, giving title to the purchaser of " the mortgaged property, turning over the pro- " ceeds to parties having no right, and thus deprive " a judgment creditor, who was on the threshold, " at the time of this Court's taking cognizance of " the case, of all remedy, unless it be the circuitous " one of an independent bill." Gallagher and Reisenberg, not being judgment creditors, cannot file an independent bill. And yet they have been enjoined.

When Congress excluded railway companies from the class of corporations subject to the bankrupt law, it determined that in case of their insolvency their assets should not be administered by the Federal courts, but should be left to the exclusive control of the State courts, unless there was an actual controversy in relation to such distribution between citizens of different States, and unless the proceeds were *in invitum*.

We submit, further, that if the only persons heard by the Court are to be those who have wrecked the property, and friendly creditors under their control, whom they have selected to institute the proceedings, there will be more danger of its acting unadvisedly, than if the Court listens to the recommendation of parties who are interested in the administration of the assets, and who are opposed to the wishes of these men, who have mismanaged the two corporations and robbed their treasuries.

Suppose that an act of Congress had been passed which expressly authorized an insolvent to procure a friendly creditor to institute proceedings in bankruptcy against him; that the statute contained a provision that a receiver should be appointed in such a suit; that all other creditors of the insolvent should be enjoined from interfering with the possession of the properly; that no creditor other than the petitioner should be allowed a hearing in the proceedings; and that the friendly petitioner and the insolvent defendant should control the litiga-

tion, the injunction and the receivership, and no one else have any voice before the courts as to the propriety or form of orders affecting the administration of the assets. Would not such a statute be held to be unconstitutional as not due process of law? What is the difference in the principle between the case supposed and the position of the complainants below?

III.

Should the Court consider that our application must be denied because we have a right to appeal, we respectfully request that it so state in its memorandum denying our motion.

As at present advised, it seems clear to us, under the authorities, that no such right exists. If we are wrong, we hope to be so informed in order that we may assert our rights in that respect at once.

Respectfully submitted,

ROGER FOSTER,
Of Counsel for Petitioners.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1907.

ORIGINAL NUMBERS 11 AND 12.

IN THE MATTER

OF

The Application of DANIEL GALLAGHER and FRANCIS S. REISENBERG and JOSEPH KONRAD for Writ of Mandamus or Alternative Relief against the Honorable E. Henry Lacombe, Circuit Judge of the United States for the Second Circuit, and against the Circuit Court of the United States for the Southern District of New York.

SUPPLEMENTAL MEMORANDUM FOR PETITIONERS.

I.

The writ of mandamus is an extraordinary remedy. It is instituted in the name of the People by persons as relators, who are interested in the relief sought. When the application is made to compel

action by a judge, the relator need not be a technical party to the suit. It is sufficient if he suffered some injury from the conduct of the Judge which he wishes vacated. When the order below is not appealable and the duty is clear the writ nearly always issues. It will also issue when there is a remedy by appeal; but such remedy is inadequate.

(*a.*) The creditors are *quasi* parties to the suit, which is brought by two unsecured general creditors for the benefit of all. They have an interest in the property for which the receivers are appointed. The interest of Konrad, a judgment creditor, is a statutory lien recognized at common law. That of Gallagher and Reisenberg is one that is recognized in equity.

As said in *State ex rel. Fourth National Bank* v. *Johnson*, 103 Wisc., 591, 618, cited *infra:* "The creditors were real owners."

In *Anderson* v. *Jacksonville, P. & M. R. R. Co.*, 2 Woods, 628, 630, Mr. Justice Bradley said: "Creditors who are allowed to prove debts, and "persons belonging to a class on whose behalf a "suit is brought, are regarded as *quasi* parties, and, "of course, have a standing in court."

(*b.*) Even if the petitioners' relations to the suit and property in question were not such that they would otherwise have a right to review the proceedings, as citizens and residents of the State and County of New York, who daily use the street railroads, which have been taken into the possession of the Federal court, they have a grievance, because the supervision of the management of those railroads has been wrested from the courts of the State, and because the execution of the State statutes has been thus impeded (*People* v. *Halsey*, 37 N. Y., 344, 348, and cases cited).

(*c.*) Even if a remedy by appeal from the final decree existed, still it is so inadequate under the

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circumstances of this case that a writ of mandamus should be granted. Delay will result in the expenditure of the $3,000,000, which would otherwise have been applied to the satisfaction of the claims of the petitioners and others similarly situated, and will now be used in improvements of the railway and its cars. The property will also probably be encumbered by an issue of receivers' certificates. Moreover, a default in the payment of rent upon the leased line of the Third Avenue Railroad Company, ordered by the Circuit Court (Return, 435), has already caused a suit to foreclose the mortgage by the Metropolitan Street Railway Company covering all those leased lines (331); and yet the professed object of all the receiverships, as stated in the original bill (11), in the petition of the Metropolitan Street Railway Company (32), and in the different opinions of the learned Circuit Judge (434, 438), is: that it is "of vital importance" to the interests of the railway companies and to the public that the whole system should be operated as a unit; and the Judge also refers to the importance of giving the public "facility of transfer" (434). This must mean the present free transfer system, the destruction of which, it is believed by the public, is designed by this litigation in the Federal Court, engineered by some of the same men that have destroyed the general free transfer system in the adjoining Borough of Brooklyn.

In his treatise on *Mandamus*, 26 Cyc., 171, 172, 206, Judge Sanborn says: "It has been held that "mandamus will lie when other existing remedies "are tedious, are not sufficiently speedy, or in case "they have become obsolete or are circuitous. * * * "In case the statute peremptorily requires a dis- "missal on certain conditions, the writ will go to "compel it." Citing amongst other cases *State* v. *Johnson*, 105 Wisc., 90, 80 N. W., 1104, holding that a trial court's refusal to dismiss may be controlled where it can be reviewed on appeal only after a burdensome and expensive trial.

State v. *Watson*, 2 Spears S. C. Law, 97, 105: "A "doubtful right of appeal does not destroy a plain "common law right" by mandamus.

Ebry v. *School Trustees*, 87 Cal., 167, 177: "It "is well settled that an equitable remedy does "not deprive a party of the legal remedy of man- "damus."

In *People ex rel. Fourth National Bank* v. *Johnson*, 103 Wisc., 591, 637, *cited supra*, the fact that, by the delay of an appeal, new equities may arise, was *held* to be a sufficient reason for granting the writ. There a mandamus was granted: to compel a Circuit Judge to permit intervening creditors of an insolvent corporation to examine the officers of that corporation and its assignee, appointed by a voluntary assignment, to permit them also to file objections to the assignee's account; and directing him to set aside orders denying applications for such relief. It appeared that the right of appeal existed, but it was *held*, that that did not prevent the issue of the writ.

"But it is argued that, inasmuch as the appeal "lies from the order settling the assignee's account "(Sec. 1701), as well as from the other orders made "in the assignment proceedings (Sec. 1702*i*; *in re* "Gilbert, 94 Wis., 108); there can be no remedy by "mandamus. The general rule of law undoubtedly "is that mandamus will not lie where there is a "remedy by appeal or writ of error (Merrill, Man- "damus, § 201; 2 Spelling, Extr. Relief, § 1390; "State *ex rel.* Spence *v.* Dick, *ante*, p. 407). But "*the remedy by appeal must be substantially ade- "quate in order to prevent relief by mandamus.* "If it appears that an appeal will not be an ade- "quate remedy, mandamus may still issue, in the "discretion of the Court (Merrill, Mandamus, "§ 201; Merced M. Co. *v.* Fremont, 7 Cal., 130; "Hawes, Jur., § 141.) In the present case it is quite "apparent that appeals from the orders complained "of would in all reasonable probability constitute "no remedy to the creditors. The assignment was

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" made June 1, 1893. A large portion of the assets " of the bank consisted of commercial paper exe- " cuted prior to that date, and necessarily maturing " in the summer and early fall of 1893. Such of " the paper as is still uncollected and has not been " sued on will become barred by the statute of limi- " tations within a few months. Furthermore, the " long lapse of time which has occurred since the " assignment renders it almost certain that rights " of action are daily lapsing. Appeals from such " orders could not, in the ordinary course of appel- " late proceedings, be heard and decided before late " in the coming autumn or in the winter of 1899. " It is very plain that if the creditors are to exer- " cise their rights with any prospect of benefit, " they must exercise them promptly. The delay " attending upon the presentation and considera- " tion of an appeal would probably be fatal to any " effective relief."

In *People on the relation of Port Huron and Gratiot Ry. Co.* v. *The Judge of St. Clair Circuit*, 31 Mich., 456, the writ of mandamus was issued *to compel the vacation of an order appointing a Receiver with the accompanying injunction.*

In *State ex rel. Fourth Nat. Bank* v. *Johnson*, 105 Mich., 160; 80 N. W., 1104; the vacation of an order appointing an assignee.

In *State ex rel. New Orleans* v. *Judge*, 52 La. Ann., 1275, 1276, 1278, 1279; *held*, that a mandamus would lie to vacate an injunction against the sale by a city of a street railway franchise, which had been advertised; since an appeal could not be argued until after the date fixed for the sale.

In *Ayres* v. *Gartner*, 90 Mich., 380; *T. & B. C. R. R. Co.* v. *Circuit Judge*, 44 Mich., 479; and *Ex parte Alabama Gold L. I. Co.*, 59 Ala., 192, writs of mandamus were also granted to compel the vacation of injunctions. The writ has been issued to compel the vacation of a stay of proceedings (*Livingston* v. *Dorgenois*, 7 Cranch, 577); the

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vacation of an order for the payment of alimony *pendente lite* (*Brady* v. *Brady* (Ala.), 39 So. Rep., 237); to vacate an order requiring the production of books (*People* v. *Judge of Circuit Court*, 38 Mich, 351).

When the Circuit Courts have refused to obey the mandate of this Court, there is a remedy by a second appeal or writ of error (*Perkins* v. *Fourniquet*, 14 How., 328; *Martin* v. *Hunter*, 1 Wheat., 304; *Roberts* v. *Cooper*, 20 How., 467; *Cook* v. *Burnley*, 11 Wall., 659; *Tyler* v. *Magwire*, 17 Wall., 253). Notwithstanding, this Court has frequently granted a writ of mandamus to compel immediate obedience in cases where there were was no discretion to be exercised by the inferior Court (*Sibbald* v. *U. S.*, 12 Pet., 488; *Gaines* v. *Rugg*, 148 U. S., 228; *City Bank of Fort Worth* v. *Hunter*, 152 U. S., 512; *White* v. *U. S.*, 1 Black, 501; *U. S.* v. *Fossatt*, 21 How., 445; *Ex parte Dubuque & P. R. Co.*, 1 Wall., 69; *In re Washington & G. R. Co.*, 140 U. S., 91). The reason is well stated in *North Alabama Development Co.* v. *Orman* (C. C. A.), 71 Fed., 764, 768. "Although it might have been admissible to raise "the question by a new writ of error, yet, in view "of the expense and delay to be caused thereby, "and that a supersedeas bond would be necessary "thereto, we do not consider that such remedy "would have been fully adequate, or that a writ of "mandamus is now improper."

The writ has been issued to compel the remand to the State Court of proceedings improperly removed (*Virginia* v. *Rives*, 100 U. S., 313, 323, 329; *Virginia* v. *Paul*, 148 U. S., 107; *Ex parte Wisner*, 203 U. S., 449; *Chicago & A. R. Co.* v. *Wiswall*, 23 Wall., 507).

The writ has frequently been granted to set aside an order, which improperly vacated a former order or decree.

(*State* v. *Commissioners of Clinton County* (Ind.), 68 N. E. Rep., 295, 70 N. E. Rep., 373, 984; *Ellair* v. *Wayne Circuit Judge*, 46 Mich., 496; *Ex parte*

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Parker, 131 U. S., 221; *Ex parte Cresswell*, 60 Ala., 378.) In *Ex parte Jones*, 133 Ala., 212, 214, 32 So. Rep., 643; to compel the vacation of an order, which set aside an order dismissing a bill.

In *Utah* v. *Hart*, 19 Utah, 438; where the State had no right of appeal, the writ was allowed, to compel a district judge to impanel a jury and try a criminal prosecution, in which he had declined to proceed because of a supposed want of jurisdiction.

The writ has frequently been granted to compel the dismissal of proceedings for want of jurisdiction; although there might have been an appeal from the final decree (*Ex parte Cole*, 28 Ala., 50, 53; *Ex parte Robbins*, 29 Ala., 71; *First National Bank* v. *Cheney*, 120 Ala., 117; *Barnett* v. *Warren Circuit Court*, 3 Ky. (1 Hardin), 172; *Cogney* v. *Wattells*, 122 Mich., 467; *Anderson* v. *Pennie*, 32 Cal., 265, *Palmer* v. *Jackson County Judge* (Mich.), 50 N. W., 1086; *Palmer* v. *Peck County Judge*, 90 Mich., 1; *Merriman* v. *Peck*, 95 Mich., 277; *Combs* v. *Wilber*, 99 Mich., 234; *Schwartz* v. *Barry* (Mich.), 51 N. W., 279 (a contempt proceeding); *Weston* v. *Probate Judge*, 69 Mich., 600; *Brady* v. *Brady* (Ala.), 39 So., 327).

II.

If mandamus is not the proper remedy, under our prayer for alternative relief we are entitled to the writ of prohibition or of *certiorari;* in the latter case, the common law writ of *certiorari*, which is issued under U. S. R. S., Sec. 716, and is not that authorized by the Evarts' Act of 1891. *In re Chetwood*, 165 U. S., 453, 462; a contempt proceeding was thus reviewed and anulled.

In *State ex rel. Merriam* v. *Ross*, 122 Missouri, 435, under a statute similar to this section of our Revised Statutes, the Supreme Court of Missouri, at the relation of a creditor, granted the writ of

prohibition to set aside an order appointing a receiver of a railway company made as was that of the Metropolitan Railway Company here, upon the petition of the corporation. The Court said:

"It is simply a petition by a debtor for the appointment of a receiver to manage and carry on its business, so that its creditors cannot enforce their legal rights in the courts of the country, and not a petition stating a cause of action either at law or in equity in which, as incident thereto, a receiver might be appointed. The filing of that petition no more constituted an actual controversy between contending suitors in court than would the filing of a copy of the Lord's Prayer."

III.

The authorities which the learned Circuit Judge believed controlled his action are not in point. The *Wabash* and the *New York and New England Railroad Companies* were both engaged in the operation of railroads in three or more different States. The cases were caused by great emergencies; and interstate commerce would have been stopped had the Federal Courts not interfered. They both consequently arose under the Constitution and laws of the United States and there was no need of any controversy to give the Courts jurisdiction. The question of the jurisdiction of the Federal Court was, moreover, never raised nor disputed in either of them. And Brassey *v.* N. Y. & N. E. R. R. Co., 19 Fed., 663, was brought by the holder of mortgage bonds to protect his lien. And yet these cases have been the subject of criticism (*Atkins* v. *Wabash, St. L. & P. Ry. Co.*, 29 Fed., 161, 173; *State ex rel. Merriam* v. *Ross*, 122 Mo., 435).

In *Quincy, Missouri & Pac. R. R. Co.* v. *Humphries*, 145 U. S., 82, 95, 96, this Court said, speaking through Mr. Chief Justice Fuller: "The "bill was obviously framed upon the theory that "an insolvent railroad corporation has a standing "in a court of equity, to surrender its property "into the custody of the Court, to be preserved and "disposed of according to the rights of its various "creditors, and in the meantime *operated in the* "*public interest.* * * * The bill is characterized "by one of the counsel as 'without precedent.' "We are not called upon to inquire as to how that "may be; but we readily agree that the concession "to a mortgagor company, of its power through "its own act, to displace vested liens by unsecured "claims, is dangerous in the extreme."

We believe that the assumption by the Circuit Court here of power to appoint a receiver over a lessor corporation because of its previous appointment of a receiver over the property, which the corporation had leased, was unprecedented and unwarranted. The appointment was made at the request of the lessor, which could have had no controversy with any one except its lessee. And that lessee was a citizen of the same State as the lessor. Judge Lacombe in his opinion said, "It is of vital interest to petitioner that the property be kept intact"; and yet the result of the receivership (Return, 438) has been a foreclosure suit because of the refusal of the Court to permit the receivers to pay the rent due the Third Avenue Railroad Company (R., 431, 435). The learned Judge continued: "The interests of lessor and lessee are different and in a sense diverse" (R., 439). He continued "having taken possession of the *res*, the Court acquires jurisdiction of the owner" (433). In other words, he assumed that, whenever a court has appointed a receiver of leased property in a suit against a lessee, it consequently has power to appoint a receiver of the lessor. If that be the case, it must follow that,

whenever a court appoints a receiver of mortgaged property in a suit against the mortgagor, it thereby acquires jurisdiction to appoint a receiver of the mortgagee. In the present case it may well be that all the property of some of the creditors of the New York City Railway Company and of the Metropolitan Street Railway Company consists in their respective claims against those railway companies, which are in the hands of the receivers. According to Judge Lacombe's theory, each one of those creditors must consequently be entitled to apply to the Federal court for the appointment of a receiver of all of his assets and for an injunction against another creditor suing or otherwise interfering with him. Yet we doubt if the learned Circuit Judge would have been guilty of such an absurdity in the first instance; although the logical result of his action towards the Metropolitan Street Railway Company must compel such an extension of the receivership should any of its creditors apply for the same.

In *Central Railroad & Banking Co.* v. *Farmers' Loan & Trust Co.*, 56 Fed., 357, 364, 365; the Central Railroad and Banking Company of Georgia was in possession of the lines of the Port Royal and Augusta Railway Company and operated the same in interstate commerce under a lease or other contract, which it had obtained by its control through the ownership of a majority of the stock of the latter company. Rowena Clarke, a stockholder of the former company, had obtained in the Federal court the appointment of a receiver of that corporation and of two of its lessors. The corporation itself then filed a bill in the same Federal Court against its mortgagee and against all the railroads which it operated, including the Port Royal and Augusta Railway Company. This bill alleged that the disintegration or dismemberment of its railway system would be disastrous, and prayed the appointment of a receiver of the entire system and of all of the auxiliary and controlled property of the corpo-

ration, together with the marshalling of all the assets. Subsequently, the Superior Court of Georgia, in a stockholder's suit, appointed another receiver of the railroad and other assets of the Port Royal and Augusta Railway Company. The State receiver filed his petition in the Federal Court, praying that the railroad and other property of the Port Royal and Augusta Railway Company be delivered to him, and suggested that the Federal Court had no jurisdiction over any controversy between the Central Railroad and Banking Co. of Georgia and the Port Royal and Augusta Railway Company, because they were citizens of the same State. The Circuit Court of the United States granted the application of the State receiver. In his opinion Judge Pardee said: "It cannot be "seriously contended that, under the bill of *Rowena* "*Clarke* v. *The Central Railroad and Banking* "*Company of Georgia*, this Court has any jurisdic- "tion or control over the Port Royal and Augusta "Railway Company, because the Port Royal and "Augusta Railway Company was neither a party "to that bill nor were its possession or property "affected thereby, or by any orders entered therein. "The claim presented here by Averil is the right "of the Port Royal and Augusta Railway Com- "pany to the control and possession of its own rail- "way, as against the right of this Court to posses- "sion of the railway and its properties under the bill "of *The Central Railroad and Banking Company* "*of Georgia* v. *The Farmers' Loan and Trust Com-* "*pany et al.* The bill does not appear to be in any "wise ancillary to, or dependent on, the Rowena "Clarke bill, in so far, at least, as the Port Royal "and Augusta Railway Company is concerned.

"Assuming, however, for this hearing, that this "Court is fully seized of jurisdiction under the said "bill of all the property of the Central Railroad and "Banking Company of Georgia for the purposes al- "leged and the relief prayed for, it does not follow "that, under the facts shown by the record, the

"Court has any jurisdiction over the Port "Royal and Augusta Railway Company. The "citizenship of the two corporations, even if "there was a controversy between them, is such— "both being Georgia corporations—as not to confer, "but rather to forbid jurisdiction. The Central "Railroad and Banking Company asserts no owner- "ship over, nor estate in, the Port Royal and "Augusta Railway Company, nor in its property, "nor any controversy with it as to ownership or "lien. It asserts the ownership of stock in, and "that it is a creditor of, that corporation, and that "it has, for many years, as creditor and stock- "holder, controlled the same. The Port Royal and "Augusta Railway Company is a distinct corpora- "tion, fully organized, with all of its rights as such "in full force, and the Central Railroad and Bank- "ing Company has no right to its possession and "control, save through the legitimate influence it "may exert as a majority stockholder. The pos- "session and control of this Court by its receiver "under the bill referred to cannot be greater than "the right of the Central Railroad and Banking "Company."

In *Metropolitan Tr. Co.* v. *Lake Cities El. Ry. Co., 100 Fed. R., 897*, it was *held* that a Federal Court may foreclose a mortgage upon property held by a receiver appointed by a State Court in a suit to which the mortgagee was not a party, and that in such foreclosure suit the Federal Court can determine the claim of the holders of receiver's certificates issued under the order of the State Court to a preference over the mortgage.

That a State court has the same power as regards property in the custody of Federal Court is held in *Jenks* v. *Brewster*, 96 Fed., 625. A State court may determine the validity of a chattel mortgage upon property in the custody of a Federal Court (*Frank* v. *Vollkomer*, 205 U. S., 521).

Pressley v. *Harrison, 102 Indiana, 14, 21, 22:*

"Actions in which receivers may be appointed "must be actions in which there are adversary "parties. * * * It was nothing more than the "two partners uniting in a request to the Judge in "vacation for the appointment of a receiver with- "out a suit pending. That the one put his request "in one paper and the other his consent in another, "entitling each with a caption as if they were ad- "verse parties, counts for nothing. The substance "of proceeding was as stated above. We have "no doubt that parties to a controversy in an action "pending may consent to the appointment of a "receiver. We know of no authority, however, "for partners to go before a court in term, or a "Judge in vacation, without a suit pending, and by "mutual consent effect a voluntary assignment in "the manner here proposed."

In *Jonas* v. *Bank of Leadville*, 10 Colo., 464, 473):

"To hold that courts of equity can entertain "jurisdiction to appoint a receiver of property as "the substantive ground and ultimate object and "purpose of the suit, on the petition of the owner "of the property to be controlled and protected, "would be to make them the administartors of "every estate when the owners thereof seem in- "capable or unwilling to administer them."

It has been held: that a statute is void which authorizes the appointment of a receiver without notice to and a hearing by a party interested in the property

Bostwick v. *Isbell*, 41 Conn., 305.

IV.

In *Blair* v. *Chicago*, 201 U. S., 400, suits were brought at common law by creditors, who were citizens of another State, against an Illinois corporation. Trials were had and judgments entered, upon which receivers were appointed therein. These receivers brought a suit against the City of Chicago. There was a distinct federal question presented in that case, namely, whether the obligation of a contract had been impaired. The plaintiffs, having obtained judgment and execution unsatisfied, had a right to the appointment of such receivers. The attack upon their appointment was not made in the same suit, but in a collateral proceeding taken by those receivers for the enforcement of their rights. The appointment of the receivers and the judgments upon which they were appointed could not be collaterally questioned (*Re Cuddy*, 131 U. S., 280, 285; and cases cited in former brief, pp. 7, 8).

In *Dickerman* v. *Northern Trust Co.*, 176 U. S., 181, there was a difference of citizenship between the parties to the suit to foreclose a mortgage. The defendant was the so-called Straw Paper Trust, engaged in interstate commerce, operating mills in nine different States. Collusion was only charged as against Flanagan, not a party to the suit, who, after a trial, had recovered judgment before a justice of the peace for the amount of coupons which were overdue and unpaid, the existence of which judgment and of an unsatisfied execution thereunder was enough to mature the mortgage. He had an undoubted right to obtain that judgment, since he had a legal demand. Moreover, the jurisdiction of the federal courts was not in question there.

V.

The suggestion, that the incurrence by the receivers of liabilities, since their invalid appointment, is a reason for perpetuating the same, is entitled to no serious consideration. One of the principal things, of which we complain, is that property, which should be appropriated to the payment of our debts and to the discharge of legitimate fixed charges, such as mortgage interest and rents, which may have a priority to the debts due us, has been spent upon needless improvements and in other manners, for the purpose of bringing about a foreclosure and reorganization.

VI.

In conclusion, we refer to the opinion of Mr. Justice Seabury in the State Court upon the application of the Attorney-General for the appointment of receivers of these two railway companies (N. Y. Law Journal, November 30, 1907).

Respectfully submitted,

ROGER FOSTER,
Of Counsel for Petitioners.

Office Supreme Court, U. S.
FILED.
DEC 2 1907
JAMES H. MCKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1907.

No. 11.

(ORIGINAL.)

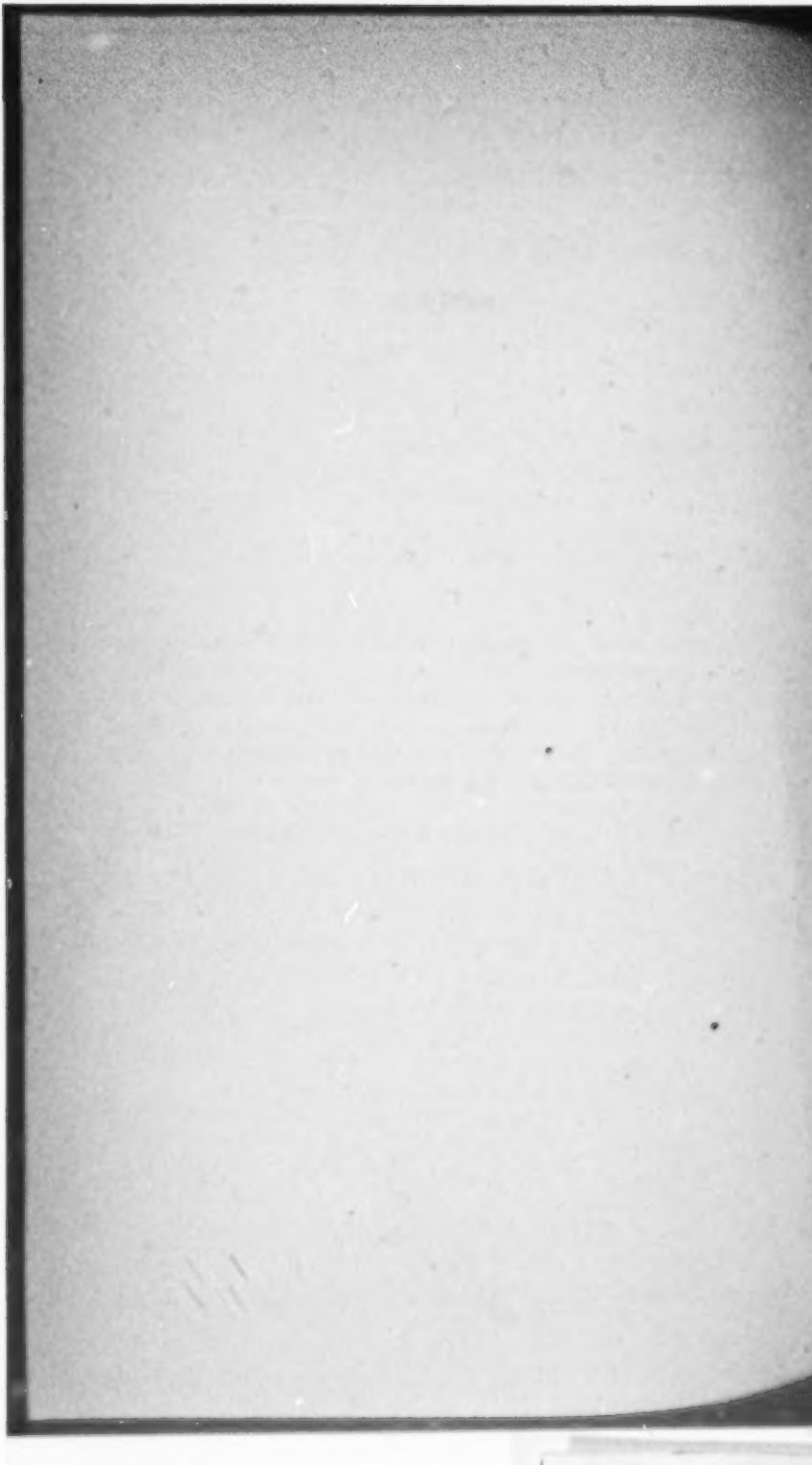
IN THE MATTER

OF

THE APPLICATION OF FRANCIS S. RREISENBERG AND DANIEL GALLAGHER FOR A WRIT OF MANDAMUS AGAINST THE HONORABLE E. HENRY LACOMBE, CIRCUIT JUDGE OF THE UNITED STATES FOR THE SECOND CIRCUIT, AND AGAINST THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Return of E. Henry Lacombe, Circuit Judge of the United States for the Second Circuit, and the Circuit Court of the United States for the Southern District of New York.

C. G. Burgoyne, Walker and Centre Streets, N. Y.



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Supreme Court of the United States.

In the Matter

of

The Application of Francis S. Reisenberg and Daniel Gallagher for a Writ of Mandamus against the Honorable E. Henry Lacombe, Circuit Judge of the United States for the Second Circuit, and against the Circuit Court of the United States for the Southern District of New York.

Return of E. Henry Lacombe, Circuit Judge of the United States for the Second Circuit, and the Circuit Court of the United States for the Southern District of New York.

To the Honorable Melville W. Fuller, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

In compliance with the order to show cause why the prayer of petitioners should not be granted, issued by this Honorable Court on November 18, 1907, and served November 21, 1907, the above named Respondents do hereby respectfully present that:

On September 24, 1907, a bill in equity was filed in the United States Circuit Court, Southern District of New York, by The Pennsylvania Steel Company and

The Degnon Contracting Company, citizens and residents respectively of the States of Pennsylvania and New Jersey, against the New York City Railway Company, a citizen and resident of the State of New York, alleging the insolvency of the defendant and praying for the marshaling and administration of its assets; a subpœna was issued thereupon and service was made upon the defendant. An answer to the bill, admitting its allegations, was there after on the same day filed in said court and the bill and answer were presented to the respondent E. HENRY LACOMBE then holding said court. Copies of the bill, the subpœna, the Marshal's return, and the answer thereto are hereto annexed marked Exhibits A, A-2, A-3, and B. Counsel for the respective parties appeared and upon motion by complainants, not opposed but assented to by defendant, a decree appointing temporary receivers of the New York City Railway Company was signed and entered, a copy of which is hereto annexed marked Exhibit C. The receivers, Adrian H. Joline and Douglas Robinson, immediately qualified and entered upon the performance of their duties as receivers in accordance with the terms of said decree, Exhibit C. Subsequently, on October 1, 1907, a petition was presented by the Metropolitan Street Railway Company, a copy of which petition is hereunto annexed marked Exhibit D. Attached to this petition, as Schedule A, was a copy of a lease between the Metropolitan Street Railway Company, as lessor, and the New York City Railway Company, which then bore the name of Interurban Street Railway Company, as lessee; and attached to said petition as Schedule B, was a copy of the mortgage of the Metropolitan Street Railway Company dated March 21, 1902, executed to the Morton Trust Company as trustee. On the same day (October 1), on notice to all the parties in said action, an order was made and entered granting the prayer of said petition, a copy of which is hereto annexed marked Exhibit E.

On October 8, the Morton Trust Company, trustee

under the mortgage of the Metropolitan Street Railway Company dated March 21, 1902, filed a petition for leave to make the receivers parties to the suit it was about to begin, which petition was granted. (Exhibits F and G.) Thereupon, on October 9, a bill of complaint was filed by said Morton Trust Company. Said bill and the exhibits therein referred to are collectively marked Exhibit H. A subpœna was issued in said suit, and service of the same was made on October 9. Copies of the subpœna and the Marshal's return are hereto annexed, marked Exhibits H-2 and H-3. A decretal order was made on said bill (Exhibit J) appointing said Joline and Robinson as receivers of the property covered by said mortgage.

On October 7 upon return of the order to show cause (contained in the decree appointing temporary receivers dated September 24, 1907) why the receivership should not be continued during the pendency of the suit, a public hearing was had and thereafter on October 9, 1907, a decree continuing said Joline and Robinson as receivers during the pendency of the suit was made and entered (Exhibit K) which was subsequently, on October 15, 1907, amended as to its recitals by an order (Exhibit L).

On October 25 a decretal order adjudicating the insolvency of the New York City Railway Company and appointing a Special Master to take proof of claims and directing public notice to be given of the time within which claims should be presented was made and filed (Exhibit M).

Petitions for leave to intervene, etc., were presented and argument had upon them on October 14. Copies of the petitions, marked Exhibits N-2 and N-3 and N-4 and of certain affidavits filed in opposition, marked Exhibits N-5, N-6 and N-7 are annexed.

The Court heard the counsel of the parties fully on all the questions raised thereby and decided the same and on November 6, in the exercise of its jurisdiction and official discretion made orders denying such petitions (Exhibits N and O).

On November 9 a decretal order adjudicating the insolvency of the Metropolitan Street Railway Company, appointing a Special Master to take proof of claims, and directing public notice to be given of the time within which claims should be presented was made and filed. (Exhibit P.)

On November 9 the Morton Trust Company presented to the Court a petition (Exhibit Q) stating that it was about to file a bill for the foreclosure of the mortgage made by the Metropolitan Street Railway Company to the petitioner dated March 21, 1902, and praying leave to make Adrian H. Joline and Douglas Robinson as receivers of the New York City Railway Company and as receivers of the Metropolitan Street Railway Company, then in possession of the property embraced in the mortgage, parties defendant to said suit. On the same day the prayer of said petition was granted (Exhibit Q–2). Pursuant to said leave on the same day a bill of foreclosure was filed by the Morton Trust Company. Said bill and the exhibits therein referred to are hereto annexed, collectively marked Exhibit R. A subpœna was issued on said bill and service made thereof. Copies of the subpœna and the Marshal's return are annexed as Exhibit R–2 and R–3, respectively.

On November 19, upon motion, a decretal order (Exhibit S) was made appointing said Joline and Robinson under the bill of complaint to foreclose the mortgage dated March 21, 1902 receivers of the mortgaged premises and consolidating the two suits in which the Morton Trust Company is complainant.

Reasons for the making of the decrees or orders Exhibits C, E, K, N, and O appear in the three memoranda filed respectively on October 8, October 1, and October 28. Copies are annexed, marked Exhibits T, U and V. The other orders and decrees were entered because in the opinion of the Court the papers on which they were based, together with the earlier proceedings in the cause, indicated that such orders and decrees should be entered.

All orders and decrees were made upon due notice

or upon the appearance of the parties, and in the exercise of the jurisdiction and official discretion of the respondents.

This return includes all papers in the case relating to any motion, petition, or application of Joseph Konrad, Daniel Gallagher, or Francis S. Reisenberg, and is confined to the record, in accordance with the respondent's construction of the purpose and intention of the order to show cause.

The receivers have duly qualified in accordance with the different orders appointing them or extending their receivership.

Since the appointment of the receivers they have incurred many obligations under contracts for necessary work, labor and materials, for supplies, repairs, replacements of property destroyed by fire, and for improvements necessary to enable them to comply with requirements of the State and local authorities as to the operation of the road. Annexed hereto is a petition of the receivers for authority to make expenditures, marked Exhibit W, and an order granting the prayer of the petition, marked Exhibit X. They have also incurred liabilities by reason of the fact that accidents have occurred during operation of the cars, in many instances through some negligence of their employees, which have resulted in personal injuries for which claims for damages have been or will be made.

Messrs. Byrne & Cutcheon, solicitors for the complainants in the original suit, and J. Parker Kirlin, Esq., solicitor for the Metropolitan Street Railway Company, having desired to be heard, in order to secure them such opportunity, the respondents hereby designate them or such associate counsel as they may select, to present this return and to file such brief and make such argument as may be required on the order to show cause.

Nov. 30th, 1907.

E. Henry Lacombe,
U. S. Circuit Judge.

[Seal U. S. Circuit Court.]

Exhibit A.

Bill of Complaint.

In the Circuit Court of the United States

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY, Complainants, AGAINST NEW YORK CITY RAILWAY COMPANY, Defendant.	In Equity.

TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF NEW YORK;

Your orators, The Pennsylvania Steel Company, a corporation duly organized and existing under the laws of the State of Pennsylvania, and a citizen of said State, and The Degnon Contracting Company, a corporation duly organized and existing under the laws of the State of New Jersey and a citizen of said State, bring this their bill of complaint on their behalf and on behalf of all other creditors of New York City Railway Company, defendant, who may hereafter join in the prosecution of this suit against the New York City Railway Company, a corporation organized and existing under and by virtue of the laws of the State of New York and a citizen of said State, resident in the

Southern District of New York, and thereupon your orator alleges as follows:

FIRST. That your orator, The Pennsylvania Steel Company, is a corporation duly organized and existing under the laws of the State of Pennsylvania and a citizen and resident of said State, and your orator, The Degnon Contracting Company is a corporation duly organized and existing under the laws of the State of New Jersey and a citizen and resident of said State.

SECOND. On information and belief that the defendant was at all the times hereinafter mentioned and is a corporation duly organized and existing under and by virtue of the laws of the State of New York and a citizen of said State, having its principal office in the City of New York, and a resident of the Southern District of New York.

THIRD. On information and belief that the defendant, New York City Railway Company, was organized under the laws of the State of New York on or about the 25th day of November, 1901; that the defendant owns and operates certain lines of street railway in the Borough of the Bronx, in the City of New York, and also is in possession of and is operating as hereinafter set forth the system of street railways of the Metropolitan Street Railway Company in said city; that said defendant through ownership of capital stock also controls other companies owning other lines of street railway in said city; that the total mileage of the system of the defendant, including the mileage of leased lines and lines of companies controlled through ownership of stock, is upwards of five hundred (500) miles, and said system of the defendant embraces practically the entire surface traction system in the Borough of Manhattan and in the Borough of the Bronx, in said City of New York; that appurtenant to the railroads of said defendant are various rights, easements and privileges

growing out of the same and connected therewith and the defendant has other franchises and easements and holds valuable contracts, including contracts for mail and express service.

FOURTH. On information and belief, that the defendant is in possession of and operates the main lines of its system under a lease bearing date the 21st day of March, 1902, made to it by said Metropolitan Street Railway Company, by which said lease said lessor leased to the defendant the entire system of the lessor then owned or thereafter to be acquired by said lessor during the term of said lease, for the term of nine hundred and ninety-nine years from the date of said lease; that the system of said lessor so leased to the defendant embraced not only the lines owned by said Metropolitan Street Railway Company, but also all lines leased to said lessor, embracing among others the lines of the Third Avenue Railroad Company, which, including as well all lines at the time owned as all subsequent additions, said Third Avenue Railroad Company, by indenture of lease, bearing date the 13th day of April, 1900, had demised to said Metropolitan Street Railway Company for the term of nine hundred and ninety-nine years from the date of said indenture of lease; that in addition to said lines of said Third Avenue Railroad Company, said lease made by the Metropolitan Street Railway Company to the defendant embraces the lines of the following companies theretofore leased to said Metropolitan Street Railway Company or its predecessors, by various indentures of lease:

Broadway and Seventh Avenue Railroad Company.

Sixth Avenue Railroad Company.

Ninth Avenue Railroad Company.

Twenty-third Street Railway Company.

Bleecker Street & Fulton Ferry Railroad Company.

Central Park, North and East River Railroad Company,

Forty-second Street and Grand Street Ferry Railroad Company,

Eighth Avenue Railroad Company,

New York and Harlem Railroad Company (City Line),

Second Avenue Railroad Company,

Central Crosstown Railroad Company,

Christopher and Tenth Street Railroad Company,

and that by said lease, made by said Metropolitan Street Railway Company to the defendant, it is among other things provided that in case the defendant, said lessee, shall fail to pay the rent provided for in said lease as the same should accrue, and any such default should continue for the period of twelve months after written demand, and notice, the leasehold estate thereby created might at the option of said lessor be terminated.

FIFTH. On information and belief, that said defendant has an authorized capital stock of Twenty million dollars, of which there has been issued and is outstanding stock to the amount of Thirteen million dollars; that the lines of railway owned by said defendant are not subject to mortgage, but the lines embraced in its system are subject to the following mortgage indebtedness, which is now outstanding, the refunding mortgage of said Metropolitan Street Railway Company being, and being expressed to be, subject to said lease of February 14, 1902, made by said last named Railway Company to the defendant:

	Amount Outstanding.
Metropolitan Street Railway Company, General and Collateral Trust Mortgage	$12,500,000
Metropolitan Crosstown Railway Company, First Mortgage	600,000
Lexington Avenue and Pavonia Ferry Railroad Company, First Mortgage	5,000,000
Columbus and Ninth Avenue Railroad Company, First Mortgage	3,000,000
South Ferry Railroad Company, First Mortgage	350,000
Broadway Surface Railroad Company, First Mortgage	1,500,000
Metropolitan Street Railway Company, Refunding Mortgage	16,604,000
Fulton Street Railroad Company, First Mortgage	500,000
Thirty-fourth Street Crosstown Railway Co., First Mortgage	1,000,000
Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, First Mortgage	1,500,000
Union Railway Company of New York, First Mortgage	2,000,000
Yonkers Railroad Company, First Mortgage	1,000,000
Westchester Electric Railroad Co., First Mortgage	500,000
Tarrytown, White Plains and Mamaroneck Railway Company, First Mortgage	300,000
Southern Boulevard Railroad Company	250,000
Dry Dock, East Broadway and Battery Railroad Company, General Mortgage	950,000
Dry Dock, East Broadway and Battery Railroad Company, Certificates of Indebtedness	1,100,000
Forty-second St. Manhattanville & St. N. Av. Ry. Co., First Mortgage	1,200,000

	Amount Outstanding.
Forty-second St., Manhattanville & St. N. Av. Ry. Co., Second Mortgage Income	160,000
Broadway & 7th Ave. Railroad Co., 2d Mortgage	500,000
Broadway & 7th Ave. Railroad Co., 1st Consolidated Mortgage	7,650,000
Central Crosstown Railroad Co., 1st Mortgage	250,000
Central Crosstown Railroad Co., 1st Consolidated Mortgage (deposited with Morton Trust Co., as collateral security for the three-year notes of said Railroad Company, to the face amount of $2,250,000)	2,490,000
The Third Avenue Railroad Company, 1st Mortgage	5,000,000
The Third Avenue Railroad Company, First Consolidated Mortgage	37,560,000
Bleeker St. and Fulton Ferry Railroad Co., 1st Mortgage	700,000
Second Ave. Railroad Company, First Mortgage	1,280,000
Second Avenue Railroad Company, Debenture Bonds	89,000
Second Avenue Railroad Company, First Consolidated Mortgage	5,631,000
Christopher and Tenth Street Railroad Co., 1st Mortgage	210,000

That your orators are informed and believe that failure to meet the interest on such mortgage indebtedness, as such interest matures, will operate also as a default under the mortgage securing the indebtedness the interest on which shall so become in default, and render such mortgage enforceable.

SIXTH. On information and belief that the defendant, since entering into possession as aforesaid under said

lease from said Metropolitan Street Railway Company, has operated all the lines owned and leased by it as parts of a single system, constituting routes over different lines or parts of lines, connecting separated lines over parts of intermediate leased lines or lines of controlled companies, interchanging equipment among the various lines and furnishing equipment as might be required to meet from time to time the varying requirements of particular lines, supplying power and using power houses, car barns and stations as seemed best for the effective and economical operation of the system as a whole, and also establishing a system of transfers between various lines and routes; that the defendant owns equipment to a substantial amount, which has been used over the system as varying requirements of operation made necessary, without assignment to any particular line or lines; and your orators are informed and believe that many of the leased lines in defendant's system are without adequate equipment of their own; and your orators are further informed and believe that in many cases the motive power employed on leased lines or lines of controlled companies has been changed to electricity without supplying said lines with independent power houses or other independent sources of supply of power, leaving such lines dependent for power on other lines of the system.

SEVENTH. Your orator The Pennsylvania Steel Company alleges positively and your orator The Degnon Contracting Company on information and belief that the defendant is indebted to your orator The Pennsylvania Steel Company in the sum of Thirty-six thousand eight hundred and thirty-one and $\frac{38}{100}$ dollars ($36,831.38) for rails and track material furnished and supplied by your orator The Pennsylvania Steel Company to the defendant, at the request of the defendant, and for which the defendant agreed to pay your orator The Pennsylvania Steel Company said sum of Thirty-six thousand eight hundred and thirty-one and 38/100 dollars ($36,831.38)

and payment of said sum has been duly demanded by your orator The Pennsylvania Steel Company from the defendant and payment thereof refused and the same is now wholly due and unpaid; that said rails and track material were so supplied to the defendant for the purposes of the operation of its street railway system and to enable the defendant to comply with and fulfill the duty towards the public which the defendant as well as the respective lessors of the defendant, owed to the public, and to discharge its and their obligations respectively under the franchises for the operation of their respective lines, and were used for the purposes aforesaid; that your orator The Degnon Contracting Company alleges positively, and your orator the Pennsylvania Steel Company on information and belief, that the defendant is indebted to your orator The Degnon Contracting Company in the sum of Eleven thousand one hundred and seventy-three dollars and twenty-seven cents ($11,173.27) for work and labor done for the defendant at the request of the defendant, for which the defendant agreed to pay your orator The Degnon Contracting Company said sum of $11,173.27 and that payment of said sum has been duly demanded by your said orator from the defendant and payment thereof refused and the same is now wholly due and unpaid.

EIGHTH. That your orators are informed and believe that since entering into possession of the premises demised under said lease made by said Metropolitan Street Railway Company, the defendant has expended large sums, aggregating more than Twenty million dollars, in making extensions, improvements and additions, and other capital expenditures, to and upon lines of its system including its leased lines and lines of controlled companies and has so expended large amounts in the electrification of various lines theretofore operated by horses, and that said expenditure has greatly benefited such lines of railroad and enhanced the value of said leased properties, and properties of controlled

companies ; but that the expenditures required for that purpose have exceeded the resources of the defendant ; that the defendant has recently entered into contracts for electrification, which are now in course of performance ; that the ultimate liability of the defendant under such contracts is upwards of Four million dollars ; that the defendant is and will be unable to meet such liability, and that notwithstanding large amounts have been expended in the purchase of materials and otherwise in connection with such electrification, such work must be suspended, thereby causing heavy loss to the defendant and subjecting the defendant to heavy liabilities ; that the defendant has been required and will be required to make large expenditures for the maintenance and repair of its system and among other things has entered into contracts for new equipment to replace equipment destroyed, or otherwise requisite for the operation of its system ; that said equipment will shortly be deliverable and that the defendant will be unable to pay therefor, although immediately necessary for the operation of its lines ; that in the course of the operation of its lines, numerous accidents have occurred, in respect of which suits have been brought and are now pending, and that said suits to the number of several thousand are now upon the calendars of the Courts awaiting trial, and that the defendant will be without means to meet judgments recovered in said suits.

NINTH. That your orators are informed by the officers of the defendant and believe that the defendant has outstanding floating indebtedness for materials, equipment, taxes and supplies furnished, to the amount of upwards of Two million dollars ; that said floating indebtedness is now overdue ; that the defendant is unable to pay the same, and that the holders thereof are pressing for payment thereof ; that the defendant also has outstanding obligations to the amount of several million dollars, the payment of which is secured by obligations of various companies controlled by the

defendant or owning leased lines embraced in the defendant's system ; that said obligations are payable on demand and that the defendant is without means to pay such obligations, or under existing financial conditions to effect new loans against such collateral and is without other collateral available for such purpose. Your orators are informed and believe that the defendant has no means at hand with which to meet its immediate pressing needs in operating its system ; that many of the creditors to whom the defendant is liable are pressing the defendant for immediate payment, and that some of said creditors may bring suits in respect of their said claims, and may levy execution on the lines of railroad owned by the defendant and on the material and supplies and other property of the defendant on hand and kept by the defendant for necessary use in operating said railway system, and your orators allege that there is grave danger that the lines of the defendant may no longer be operated in a single system, but the various lines which are now owned or controlled or leased by the defendant may be broken up and be separately operated; that there is likewise grave danger that suits may be instituted against the defendant in respect of the claims above stated; and that it is essential to the interest of the defendant and to the interest of the public and to your orators that the property of the defendant should not be sacrificed; that the position of defendant is the more acute by reason of the depressed financial situation; that the gross income of the system decreased during the last fiscal year about Six hundred thousand dollars, while the expenses of operation and maintenance increased by about the same amount, an aggregate difference of about One million two hundred thousand dollars; that the claims for special franchise taxes which are now in litigation, amount to over Three million dollars, and the Comptroller of the City of New York is pressing for the payment of these taxes, and that the defendant has not

sufficient credit to obtain the funds required for the operation of its properties.

TENTH. And your orators allege, on information and belief, that the only means whereby the defendant can meet its obligations under said lease from said Metropolitan Street Railway Company and pay its floating indebtedness and discharge its current obligations, is by the continued maintenance and operation of said system as a whole by an uninterrupted use thereof; that any suits upon or process against its properties or its revenues would seriously embarrass and cripple it, and diminish, if not destroy, its power successfully to operate said system, in the exercise of its franchises; that said system, together with all its appurtenances, rolling stock and other property connected therewith are now in a reasonably good state and condition; that the railroads operated by the defendant are so numerous and extensive as to constitute practically the entire street surface railroad system in the County of New York; that during the last year the lines owned or leased by the defendant carried about four hundred million passengers, and the average number of persons employed by the defendant and its various controlled and allied corporations will exceed six thousand; that it is of vital importance to the people of said County of New York that said system shall continue to be operated as a whole, and to this end it is of like importance that said system shall be preserved; that notwithstanding the fact that every effort has been made to provide funds for the payment of the indebtedness of the defendant, or for the extension of the time of payment thereof, such efforts have proved unsuccessful; that unless some definite action is taken on behalf of all the creditors so that the operation of defendant's system may be kept intact, great and severe loss will be inflicted on all creditors; that the credit of the defendant has been seriously impaired; that it has not money to pay the debts which have matured, and has

no reasonable hope of finding assistance from any quarter to enable it to do so, and that the defendant is insolvent.

Your orators believe unless the Court, in view of the facts above set forth, shall take said system of the defendant into judicial custody for the protection of every interest therein, that immediately upon default, individual creditors will assert their rights and remedies in different courts; that the result will be a multiplicity of suits and a race of diligence; that attempts will be made to secure judgments and priorities; that levies will be made upon cars, rolling stock, material and supplies indispensible to the operation of the system, which will greatly interfere with, and ultimately prevent defendant from, the proper performance of its duties as a common carrier, and of its mail and express contracts, and will seriously diminish its earnings; that it will be impossible to operate the system as a whole, and the system of transfers among the lines in said system will be broken up, to the serious inconvenience of the public, and a most important and valuable property dismembered, which might be preserved by adequate judicial protection in this Court.

And your orators allege that an attempt by your orators to enforce at law their claims as general creditors would precipitate similar action on the part of other creditors, and this in turn would lead to wasteful strife and controversy, which your orators believe can be avoided, and the property preserved for equitable distribution among those entitled thereto, only by the intervention of a Court of equity and the granting of equitable relief, including the appointment of a Receiver.

ELEVENTH. That under these circumstances the interference of a Court of equity for the protection of your orator's rights, is imperatively required, and especially for the timely appointment of a Receiver to take charge of and preserve the property of the defendant, continue the operation of its system for the ac-

commodation of the public, and collect and receive and properly appropriate the income thereof until the final decree of the Court in the premises.

TWELFTH. That this is a civil suit in the nature of a claim in equity, and the matter in dispute exceeds, exclusive of interest and costs, the sum of Five thousand dollars.

THIRTEENTH. Inasmuch, therefore, as your orators have no adequate remedy at law for their aforesaid grievances, and can have relief only in equity, your orators file this bill of complaint in behalf of themselves and other creditors of the defendant, who may come in and contribute to the expense hereof, and pray for equitable relief, as follows:

1. That the rights of your orators and all the other creditors of the defendant may be ascertained and decreed, and that the Court will fully administer the fund in which your orators are interested, constituting the entire railroad system and other assets of the defendant, and will for such purpose marshal all the assets of the defendant and ascertain the several and respective liens and priorities existing thereon, and enforce and decree the rights, liens and equities of the creditors of the defendant, as the same may be finally ascertained and decreed by the Court upon respective interventions or applications of each and every such creditor or lienor in and to each and every portion of the assets and property of the defendant.

2. That for the purpose of preserving the unity of the system of the defendant as it has been maintained and operated, a Receiver may be appointed for the defendant and of all the property of the defendant, real, personal and mixed, of whatsoever kind and description and wheresoever situated, including all railroads owned, leased or operated, tracks and terminal facilities, rolling stock, franchises, leases, rights and prop-

orties with full power to sue for, collect, receive and take into his possession, goods, chattels, rights, credits, moneys, effects, lands, tenements, books, papers and property of every description of the defendant, and with all the incidental powers ordinarily vested in Receivers in like cases, and with full power and authority to run and operate such railroads, estates and property, and to collect and receive all the rents, issues, profits and income thereof, and to apply the said income and receipts thereof under the orders or decrees of the Court, for such period as the Court shall order, to protect and preserve the corporate franchises, privileges and property, and to preserve the corporate existence of the defendant, and to protect and preserve the said railroads, estates and property, real and personal, from being sacrificed under any proceedings which can or may be taken, liable to prejudice or sacrifice the same, and to do any and all acts which may be necessary to preserve valuable rights and franchises of the defendant, or otherwise requisite or proper.

3. That temporarily and pending this suit, an injunction may issue against this defendant and all persons claiming and acting by, through or under it, and all other persons, to restrain them from interfering with said Receiver taking possession of said property, and that your orators may have such further relief in the premises as the nature of the case may require and as may be agreeable to equity.

4. That the defendants be required to answer all and singular the matters above stated.

5. That a writ of subpœna may be granted to your orators to be directed to the defendant, thereby requiring the defendant personally to appear on a certain day before the Court and then and there full, true, direct and perfect answer make to all and singular the premises (but not under oath, which is hereby expressly waived), and further to perform and abide by

such further order, direction or decree therefor, as to the Court shall seem meet.

6. That your orators have such further and other relief as the Court may deem proper and equitable.

And your orators will ever pray, etc.

(Sgd.) BYRNE & CUTCHEON,
Solicitors for Complainants.

(Sgd.) JAMES BYRNE,
Of Counsel.

STATE OF NEW YORK,
County of New York,
SOUTHERN DISTRICT OF NEW YORK, } ss. :

JOHN V. W. REYNDERS, being duly sworn, deposes and says that he is the Vice-President of The Pennsylvania Steel Company, one of the complainants above named; that he has read the foregoing bill of complaint and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

(Sgd.) JOHN V. W. REYNDERS.

Sworn to before me this 24th day of September, 1907.

(Sgd.) EDMUND KIRBY,
[SEAL.] Notary Public,
New York County,
New York.

STATE OF NEW YORK,
County of New York,
SOUTHERN DISTRICT OF NEW YORK, } ss.:

NATHANIEL J. HAYWOOD, being duly sworn, deposes and says that he is the Secretary of the Degnon Contracting Company, one of the complainants above named; that he has read the foregoing bill of complaint and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

(Sgd.) NATHANIEL J. HAYWOOD.

Sworn to before me this 24th day of September, 1907.

(Sgd.) EDMUND KIRBY,
Notary Public,
New York County,
New York.

[SEAL.]

Filed 24th September, 1907.

Exhibit A².

THE PRESIDENT OF THE UNITED STATES OF AMERICA, TO NEW YORK CITY RAILWAY COMPANY, GREETING:

You are hereby commanded that you personally appear before the Judges of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, in Equity, on the first Monday of November, A. D. 1907, wherever the said Court shall then be, to answer a bill of complaint exhibited against you in the said Court by The Pennsylvania Steel Company and The Degnon Contracting Company, and do further and receive what the said Court shall have considered in that behalf. And this you are not to omit under the penalty on you of TWO HUNDRED AND FIFTY DOLLARS.

WITNESS, The Honorable MELVILLE W. FULLER, Chief Justice of the United States, at the Borough of Manhattan, in the City of New York, on the 24th day of September, in the year of our Lord one thousand nine hundred and seven, and of the Independence of the United States of America, the one hundred and Thirty-second.

JOHN A. SHIELDS,
Clerk.

BYRNE & CUTCHEON,
Solicitors for Complainant.

The Defendant is required to enter appearance in the above cause, in the Clerk's office of this Court, on or before the first Monday of November, 1907, or the bill will be taken *pro confesso* against it.

J. A. S.,
Clerk.

Exhibit A[3].

I Hereby Certify, That on the 24th day of September, 1907, at the City of New York, in my district, I served the within Subpœna in Equity upon the within-named Defendant New York City Railway Company by exhibiting to Charles E. Warren as Secretary of said Company at No. 115 Broadway, N. Y. City, the within original, and at the same time leaving with him a copy thereof.

WILLIAM HENKEL,
United States Marshal, Southern District of New York.

Dated Sep. 24, 1907.

[ENDORSED:] U. S. Circuit Court, Southern District N. Y., Filed Sep. 24, 1907, John A. Shields, Clerk.

Exhibit B.

Answer.

IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and DEGNON CONTRACTING COMPANY, Complainants, AGAINST NEW YORK CITY RAILWAY COMPANY, Defendant.	In Equity.

New York City Railway Company, the defendant in this cause, for answer to the bill of complaint herein, or unto so much and such parts thereof as the defendant is advised it is necessary or material for this defendant to make answer unto, answering, says :

FIRST. The defendant admits all the allegations of said bill of complaint.

SECOND. The defendant, reiterating the admissions of the preceding article of this answer, joins in the prayer of said bill of complaint and prays that this Court sitting in equity may take possession of the system of the defendant through the appointment of a Receiver as prayed in said bill of complaint and thereby preserve the unity of the system of the defendant as it has been maintained and operated and protect and preserve the corporate franchises, privileges and property and preserve the corporate existence of the defend-

ant and protect and preserve its said system and its said property, real and personal, from being sacrificed under any proceedings which can or may be taken, liable to prejudice or sacrifice the same, and do any and all acts which may be necessary to preserve the valuable rights and franchises of the defendant, and it accordingly prays that inasmuch as there is no adequate remedy at law in the premises for the complainants or for this defendant, that this Court will, for the purposes aforesaid, appoint a Receiver as prayed for in said bill of complaint, and empower and authorize such Receiver to take possession of the entire property of this defendant and to preserve, manage, operate and control the same, pay all indebtedness due or to become due by this defendant, and otherwise discharge all the duties ordinarily imposed by Courts upon Receivers in similar cases; that on the final hearing in this cause, this Court will, under said bill of complaint and this answer or such supplemental bill as shall be filed herein, make such decree or decrees with respect to the property of this defendant as shall deal with the same on general equitable principles, and that this Court will cause all the liens upon said property or any part thereof and all rights and claims in equity of persons interested therein to be ascertained, defined and determined, and that the proceeds arising from the sale of said property or any part thereof be applied under the said orders or decrees of this Court according to the rights, interests and equities of the parties interested therein, and that this Court will direct all persons in possession of the property of this defendant or any part thereof, to surrender the same to such Receiver or to hold such property under said Receiver.

JAMES L. QUACKENBUSH,
Solicitor for Defendant.

ALFRED A. GARDNER,
Of Counsel.

SOUTHERN DISTRICT OF NEW YORK,
State of New York,
COUNTY OF NEW YORK, } ss.:

CHARLES E. WARREN, being duly sworn, doth depose and say that he is the Secretary of the New York City Railway Company, the defendant in this suit; that he has read the foregoing answer to the bill of complaint in this suit and knows the contents thereof and that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief and that as to those matters he believes it to be true.

CHARLES E. WARREN.

Sworn to before me this 24th day of September, 1907.

EARL E. STARBARD,
[L. S.] Notary Public.

Filed 24th September, 1907.

Exhibit C.

Order Appointing Temporary Receivers.

IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY, Complainants, AGAINST NEW YORK CITY RAILWAY COMPANY, Defendant.	In Equity.

And now on this 24th day of September, 1907, this cause came on to be heard upon the bill of complaint and on the answer of the defendant thereto this day filed, upon motion for the appointment of a Receiver, and after hearing James Byrne for complainants and James L. Quackenbush for the defendant, and after due deliberation,

It was ordered, adjudged and decreed, that Adrian H. Joline, Esq., and Douglas Robinson, Esq., both of the City of New York, be and they hereby are appointed temporary Receivers of the defendant, New York City Railway Company, and of all the property of the said defendant, real, personal and mixed of whatsoever kind and description and wheresoever situated, including all railroads, owned, leased or operated by said defendant, all tracks, terminal facilities, offices, shops and all buildings and appurtenances of every kind, all cars and other rolling stock and equipment, tools, machinery, furniture, fixtures, materials

and supplies, books of account, records and other books, papers and accounts, cash in bank, on deposit and in hand, moneys, debts, things in action, credits, stocks, bonds, securities, deeds, leases, contracts, muniments of title, bills receivable, rents, issues, profits and income accruing and to accrue as well as all interests, easements, privileges and franchises and all assets of every kind; that the said receivers be, and they hereby are, authorized immediately to take possession of the same and to run, manage and operate the said railroads and properties in such manner as will in their judgment produce most satisfactory results so that the operation of the railroad system of the defendant shall be continued in the same manner as at present and the public duties obligatory upon the defendant be in all respects discharged, and to exercise the authority and franchises of defendant and discharge its public duties and to preserve and protect its said system in proper condition and repair and to protect the title and possession and secure and develope the business of the same, and in their discretion to employ and discharge and fix the compensation of all officers, attorneys, managers, superintendents, agents and employees, and to make such payments and disbursements as may be needful and proper in so doing; that the said Receivers be, and they hereby are, authorized to collect the rents, income, tolls and profits of the said railroads and property, and to make appropriate payments therefrom on account of accruing rents and other necessary charges, and they shall have power to redeem any and all securities of the defendant now pledged as security on loans of money, and shall have power to borrow money if needful in their judgment in order to comply with this direction, and also, so far as may be needful to pay off current necessities for labor and supplies, but for no other purpose without the further order of this Court; and the said Receivers are hereby fully authorized and empowered to institute and prosecute all such suits as may be necessary in their judgment for the proper protection of the property and

trust hereby reposed in them and likewise to defend all actions instituted against them as Receivers, and also to appear in and conduct the prosecution or defense of any suit now pending in any court against the defendant, the prosecution and defense of which will in the judgment of said receivers be necessary for the proper protection of the property placed in their charge, or the interests and rights of creditors connected therewith; and the said Receivers are hereby authorized in their discretion from time to time, out of the funds coming into their hands, to pay the expenses of operating the said properties and executing their trusts, and all taxes and assessments upon the said properties or any part thereof, and all such rentals and instalments as may fall or become due for the use of any portion of said railroads and other property; and also to pay and discharge all claims arising from the previous operation of said properties as in their judgment on examination are proper to be paid as expenses of operation and the current and unpaid payrolls and vouchers and supply accounts incurred in the operation of said railroad system at any time within four months prior hereto. The said Receivers are hereby required to open proper books of account wherein shall be stated the earnings, expenses, receipts and disbursements of their said trust, and preserve proper vouchers for all payments made by them on account thereof.

And it is further ordered, that the bond of each of the said Receivers in the sum of Two hundred and fifty thousand dollars, conditioned that he will well and truly perform the duties of his office and duly account for all moneys or property which may come into his hands and abide by and perform all things which he shall be directed to do, with sufficient sureties, to be approved of by a judge of this court, be forthwith filed in the office of the Clerk of this Court:

And it is further ordered that each and every of the officers, directors, agents and employees of the defendant, said New York City Railway Company, and all

other persons whomsoever, be and they are hereby required and commanded forthwith, upon demand of the said Receivers or their duly authorized agent, to turn over and deliver to said Receivers or their duly comstituted representative, any and all books of account, vouchers, papers, deeds, leases, contracts, bills, notes, accounts, moneys or other property in his or in their hands or under his or their control, and each of said directors, officers, agents and employees is hereby commanded and required to obey and perform such orders as may be given to them from time to time by the said Receivers or their duly constituted representative, in conducting the operation of the said system and in discharging their duties as Receivers.

And the defendant, said New York City Railway Company and its officers, directors, agents and employees, and all other persons claiming to act by, through or under the defendant and all other persons whomsoever are hereby enjoined from interfering in any way whatever with the possession or management of any part of the property over which the Receivers are hereby appointed or intering in any way to prevent the discharge of their duties or their operating the same, and any party in interest may apply for further direction.

And it is further ordered that the parties hereto show cause before this Court at the United States Post Office Building in the City of New York on the 7th day of October, 1907, at two o'clock in the afternoon why the said receivership should not be continued during the pendency of this suit and upon the hearing thereon any other creditor of the defendant or other party in interest may be heard.

Dated, New York, September 24, 1907.

E. Henry Lacombe,
United States Circuit Judge.

Filed 24th September, 1907.

Exhibit D.

Petition of Metropolitan Street Railway Company to Be Made Party Defendant.

IN THE CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and DEGNON CONTRACTING COMPANY, Complainants,

AGAINST

NEW YORK CITY RAILWAY COMPANY, Defendant,

In Equity.

IN THE MATTER

OF

THE PETITION OF METROPOLITAN STREET RAILWAY COMPANY,

TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

The petition of Metropolitan Street Railway Company, by J. Parker Kirlin, its solicitor, respectfully shows as follows :

FIRST. This cause is a general creditor's suit and is instituted by the complainants as creditors of the defendant for the administration of the assets and property

of the defendant. For the contents of the bill of complaint and of the answer of the defendant to said bill, reference is made to said bill and answer of record in this Court in this cause.

By an order of this Court duly entered in this cause on September 24, 1907, made on the bill of complaint and on the answer of the defendant thereto, Adrian H. Joline and Douglas Robinson were duly appointed temporary receivers of the defendant New York City Railway Company and of its property, with the powers and duties prescribed in said order. For the precise terms of said order reference is made to the original order of record in this cause. Said Joline and Robinson have duly qualified as receivers as aforesaid and have entered into possession of the property of said defendant and are now operating the same and collecting the rents, issues and profits thereof.

SECOND. Your petition is a consolidated corporation under the laws of the State of New York and by virtue of various consolidations is lawfully vested with the lines of street railway in the City of New York and the appurtenant franchises and property formerly of Lexington Avenue and Pavonia Ferry Railway Company, Columbus and Ninth Avenue Railroad Company, South Ferry Railroad Company, Broadway Surface Railroad Company, and Metropolitan Crosstown Railway Company.

Your petitioner is also the lessee of the lines of street railway in the City of New York of the following companies which by various indentures of lease, demised their respective lines of railway and the appurtenant franchises and property to the petitioner or its predecessors, or to lessors of the petitioner or its predecessors, for terms now unexpired, to wit:

Broadway and Seventh Avenue Railroad Company,

Sixth Avenue Railroad Company,

Ninth Avenue Railroad Company,

Twenty-third Street Railway Company,
Bleecker Street & Fulton Ferry Railroad Company,
Central Park, North and East River Railroad Company,
Forty-second Street and Grand Street Ferry Railroad Company,
Eighth Avenue Railroad Company,
New York and Harlem Railroad Company (City Line),
Second Avenue Railroad Company,
Third Avenue Railroad Company,
Central Crosstown Railroad Company,
Christopher and Tenth Street Railroad Company,

By each of said indentures of lease, a right of reentry is reserved to the lessor in the event of default in the payment of the rent of the demised premises.

THIRD. By indenture of lease bearing date the 21st day of March, 1902, between your petitioner of the one part and the defendant New York City Railway Company, which then bore the name of Interurban Street Railway Company, of the other part, your petitioner leased to said defendant the entire system of street railways of your petitioner, including as well all lines owned by your petitioner as all lines leased to your petitioner, for the term of nine hundred and ninety-nine years from the date of said lease, said lessee agreeing to pay by way of rental therefor, in addition to all taxes and assessments on the demised properties, all rentals payable under the leases of said lines leased to your petitioner and interest on the funded debt of your petitioner and other fixed charges of your petitioner, and an amount equal to seven per cent. per annum upon the existing capital stock of your petitioner and upon such additional capital stock of your petitioner as might thereafter be issued with the written consent of said lessee.

Said indenture of lease provides, among other things, that in case said lessee shall fail at any time to pay the rent provided for in said indenture of lease, or shall fail at any time to keep and perform any of the agreements or covenants contained in said lease, and any such default in the payment of rent or in the performance of the covenants of said lease shall continue for the period of twelve months after written demand and notice from your petitioner to said lessee, then, at the option of your petitioner, the estate by said indenture of lease demised shall cease and determine, and your petitioner shall thereupon become and be entitled to re-enter into and upon the demised railroads and properties. Your petitioner files with this petition as Schedule A hereto, a copy of said indenture of lease, and for a precise statement of the terms and conditions of said indenture of lease prays leave to refer thereto.

FOURTH. The various lines of railway embraced in said lease, as well the lines owned by your petitioner as the lines leased to your petitioner are subject to funded indebtedness secured by mortgage which is now outstanding and which so far as not outstanding at the date of the execution and delivery of said lease has since been created with the consent of said lessee, and your petitioner is informed and believes that failure to meet the interest on such underlying funded indebtedness as such interest matures will operate also a default under the mortgage securing the indebtedness, the interest on which shall so become in default, and will render said mortgage enforceable. Said mortgage indebtedness is as follows:

I.—ON LINES OWNED BY YOUR PETITIONER.

	Amount Outstanding.	When due.	Rate.	Interest when payable.
Metropolitan Street Railway Company, General and Collateral Trust Mortgage	$12,500,000.	Feb. 1, 1997	5%	Feb. 1 & Aug. 1
Metropolitan Crosstown Railway Company First Mortgage	600,000.	Apr. 1, 1920	5%	Apr. 1 & Oct. 1
Lexington Avenue and Pavonia Ferry Railroad Company First Mortgage	5,000,000.	Sep. 1, 1993	5%	Mar. 1 & Sep. 1
Columbus and Ninth Avenue Railroad Company First Mortgage	3,000,000.	Sept. 1, 1993	5%	Mar. 1 & Sep. 1
South Ferry Railroad Company First Mortgage	350,000.	Apr. 1, 1919	5%	Apr. 1 & Oct. 1
Broadway Surface Railroad Company First Mortgage	1,500,000.	July 1, 1924	5%	Jan. 1 & July 1
Metropolitan Street Railway Company Refunding Mortgage	16,604,000.	Apr. 1, 2002	4%	Apr. 1 & Oct. 1

II.—ON LINES LEASED TO YOUR PETITIONER.

	Amount Outstanding.	When due.	Rate.	Interest when payable.
Broadway & Seventh Avenue Railroad Company Second Mortgage	$500,000.	July 1, 1914	5%	Jan. 1 & July 1
Broadway & Seventh Avenue Railroad Company First Consolidated Mortgage	7,650,000.	Dec. 1, 1943	5%	June 1 & Dec. 1
Central Crosstown Railroad Company First Mortgage	250,000.	Nov. 1, 1922	6%	May 1 & Nov. 1
Central Crosstown Railroad Company First Consolidated Mortgage (deposited as collateral security for the three-year notes of that Company to the face amount of $2,250,000)	2,490,000.	May 1, 1952	4%	May 1 & Nov. 1
The Third Avenue Railroad Company First Mortgage	5,000,000.	July 1, 1937	5%	Jan. 1 & July 1
The Third Avenue Railroad Company Consolidated Mortgage	36,943,000.	Jan. 1, 2000	4%	Jan. 1 & July 1
Bleecker Street and Fulton Ferry Railroad Company First Mortgage	700,000.	Jan. 1, 1950	4%	Jan. 1 & July 1
Second Avenue Railroad Company First Mortgage	1,280,000.	Nov. 1, 1909	5%	May 1 & July 1
Second Avenue Railroad Company Debenture Bonds	89,000.	Jan. 1, 1909	5%	Jan. 1 & July 1
Second Avenue Railroad Company First Consolidated Mortgage	5,631,000.	Feb. 1, 1948	5%	Feb. 1 & Aug. 1
Christopher and Tenth Street Railroad Company First Mortgage	210,000.	Oct. 1, 1916	4%	Apr. 1 & Oct. 1

FIFTH. By said refunding mortgage of your petitioner which is expressed to be subject to said indenture of lease, made by your petitioner to said defendant, your petitioner covenanted from time to time punctually to observe and perform all of the obligations and pay and discharge all amounts payable under or by virtue of any lease thereby mortgaged so that the interest of your petitioner in any such leasehold estate might be at all times preserved unimpaired as security for the bonds issued under said refunding mortgage; and said refunding mortgage provides, among other things, that in case default shall be made in the payment of any interest on any bonds by said refunding mortgage secured or in the payment of the principal of any such bond or in case default shall be made in the due observance or performance of any of the covenants or conditions in said refunding mortgage required to be kept or performed by your petitioner, and any such last mentioned default shall continue for a period of sixty days after written notice thereof to your petitioner from the trustee under said refunding mortgage or from the holders of five per cent. or more in amount of the outstanding bonds by said refunding mortgage secured, then the trustee thereunder may forthwith proceed to protect and enforce its rights and the rights of bondholders under said refunding mortgage by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained in said refunding mortgage or in aid of any power therein granted or for the foreclosure of said refunding mortgage for any default or for the collection of interest or principal or both or for the enforcement of any other appropriate legal or equitable remedy as the trustee shall deem most effectual in support of any of its rights and duties under said mortgage. Your petitioner files a copy of said refunding mortgage as Schedule B hereto.

SIXTH. It is alleged among other things in the bil of complaint in this cause and admitted by the answer

of the defendant thereto and your petitioner so charges, that the defendant said New York City Railway Company, since entering into possession of the premises demised by said lease made to it by your petitioner, has operated all the lines owned and leased by said defendant as a single system constituting routes over different lines or parts of lines, connecting separated lines over parts of intermediate leased or controlled lines, interchanging equipment among the various lines and furnishing equipment as might be required to meet from time to time the varying requirements of particular lines, supplying power and using power houses, car barns and stations as deemed best for the effective and economical operation of the system as a whole and also establishing a system of transfers between various lines and routes; that the equipment owned by said defendant has been used over the system as varying requirements of operation made necessary without assignment to any particular line or lines and that many of the lines leased by your petitioner to said defendant are without adequate equipment of their own; and that in many cases the motive power employed or leased or controlled lines has been changed to electricity without supplying said lines with independent power houses or other independent sources of supply of power, leaving such lines dependent for power on other lines of the system.

Your petitioner further shows that it is alleged in said bill of complaint in this cause and is admitted by the answer of the defendant that the defendant is insolvent; that the fixed charges of your petitioner's system hereinabove set forth are accruing and installments thereof will become due on October 1, 1907, and each month thereafter; that failure to meet such fixed charges as they become due will operate a default under the mortgage securing the indebtedness the interest on which shall so become in default and render such mortgage enforceable; that the rentals under the leases made to your petition are accruing and that installments of rental under some or all thereof will

shortly become payable ; that under said lease made to said defendant by your petitioner, no right of reentry by reason of a default in the payment of the rent by said lease reserved or in the performance of any of the agreements or covenants therein contained will accrue thereunder to your petitioner until the expiration of a year after default and written demand and notice from your petitioner and that in the meantime your petitioner's said system may be hopelessly disrupted and your petitioner suffer irremediable loss.

SEVENTH. Your petitioner alleges that its railroad system embraced in said lease is very extensive ; that it is of vital importance to your petitioner and to the creditors of your petitioner that said railroad system should be continued to be operated as a whole, and that said system should be preserved ; that by said lease to the defendant the defendant is bound to finance the requirements of your petitioner for capital expenditures ; that your petitioner has already issued to the defendant its obligations in large amounts on account of advances by the defendant for that purpose, and your petitioner is informed and believes that the defendant has disposed of said obligations, and that said obligations are now outstanding in the hands of other holders ; that claims for personal injuries to a large amount in connection with the operation by your petitioner of its system prior to said lease are now outstanding and are the subject of actions now pending ; that by said lease to the defendant the defendant agreed to pay any judgments recovered in respect of said claims ; that by said lease made by your petitioner to said defendant your petitioner parted with the possession of its entire railroad system ; that your petitioner has no other resources wherewith to meet the fixed charges on the mortgage indebtedness of its said system so leased, or to meet the accruing rentals of said lines so leased to your petitioner or its predecessors, and by your petitioner so

leased to said defendant or to meet judgments for said claims for personal injuries, or to meet its said outstanding obligations for capital expenditures as they mature, or to meet other indebtedness or liabilities of your petitioner than the rentals reserved under said lease made by your petitioner to the defendant, as part of which said defendant agreed to pay such fixed charges and such rentals and to perform the other covenants therein contained; that said system is in the possession of this Court through its said Receivers appointed in this cause for administration in accordance with equitable principles; that no substantial remedial action can be taken in this cause at the instance of said defendant or at the instance of defendant's creditors which will not affect the rights of your petitioner; and that the rights of your petitioner are inextricably interwoven with the rights which this Court has undertaken to administer in this cause.

Your petitioner therefore prays,

I. That your petitioner may become party defendant to said suit for the protection of its interests and those of its creditors.

II. That the receivership under the bill of complaint in this cause be extended so as expressly to embrace the interests of your petitioner in said property, your petitioner submitting itself and its property to the jurisdiction of this court.

III. That said receivers be further directed to keep separate accounts not only of the lines owned by said defendant but also of such of the leased lines embraced in your petitioner's system and in your petitioner's said lease as may be deemed practicable, and that the rents, issues, profits and income be applied under the orders or decrees of this court to the end that said system of your petitioner may be protected and preserved.

IV. That your petitioner may have such other and further relief as may be just.

METROPOLITAN STREET RAILWAY COMPANY,
By D. C. MOOREHEAD,
Secretary.

J. PARKER KIRLIN,
Solicitor and counsel for Petitioner,
27 William Street,
New York.

SOUTHERN DISTRICT OF NEW YORK,
State of New York,
COUNTY OF NEW YORK, } ss.:

D. C. MOOREHEAD, being duly sworn, says: That he is the Secretary of the Metropolitan Street Railway Company, the petitioner herein, that he has read the foregoing petition in this cause, and knows the contents thereof, and that the same is true of his own knowledge, except the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

D. C. MOOREHEAD.

Sworn to before me this 1st day of October, 1907.

EDWARD H. CARPENTER,
[SEAL.] Notary Public,
New York County,
New York.

Filed 1st October, 1907.

Schedule A, Referred to in Petition of Metropolitan Street Railway Company, Exhibit D.

METROPOLITAN STREET RAILWAY COMPANY

TO

INTERURBAN STREET RAILWAY COMPANY.

LEASE.

DATED FEBRUARY 14, 1902.

THIS INDENTURE made this fourteenth day of February, in the year nineteen hundred and two, between the METROPOLITAN STREET RAILWAY COMPANY (hereinafter referred to as the "Lessor"), party of the first part, and the INTERURBAN STREET RAILWAY COMPANY (hereinafter referred to as the "Lessee"), party of the second part WITNESSETH:

Whereas:

1. Each of the parties hereto is a railroad corporation organized and existing under the laws of the State of New York.

2. The Lessor owns and operates street surface railroads and railroad routes in the County of New York, City of New York, and State of New York, described as follows:

Houston, West Street & Pavonia Ferry, or Avenue C Line.

Commencing at the intersection of Duane street with West Street, thence through and along Duane street with a double track to Greenwich street, thence through and along Greenwich street with a single track to

Charlton etreet, thence through and along Charlton street with a single track to Prince street, thence through and along Prince street with a single track to Bowery, thence upon and across the Bowery with a single track to Stanton street, thence through and along Stanton street with a single track to Pitt street, thence through and along Pitt street with a single track to Avenue C, thence through and along Avenue C, with a single track to Third street, thence through and along Avenue C, from Third street with a double track to the northern extremity of said Avenue C, thence through and along Third street, connecting with the double track in Avenue C, with a single track to First Avenue, thence through and along First Avenue with a single track to East Houston street, thence through and along East Houston street with a single track to the Bowery, thence upon and across the Bowery with a single track to West Houston street, thence through and along West Houston street, with a single track to Washington street, thence through and along Washington street with a single track to Duane street; thence through and along Duane street, connecting with the double track to the place of beginning, being the route described in Chapter 625 of the Laws of 1868.

Extension of Avenue C through Seventeenth street, etc.

Through Seventeenth and Eighteenth streets, by single track in each street, to Avenue A, thence through and along Avenue A, by double track to Twenty-third street; thence through and along Twenty-third street, by double track to First Avenue; thence through and along First Avenue, by double track, to Thirty-sixth street; thence through and along Thirty-sixth street, by single track, to Lexington Avenue; and also through and along Thirty-fifth street, by a single track, from First Avenue to Lexington Avenue; thence through and along Lexington Avenue, by single or double track, to Forty-second street; thence through and along

Forty-second street by double track to Fourth Avenue. Also, by single track, through and along Charlton street, from Greenwich to West street; and, by single track, through and along West Houston street, from Washington street to West street; thence through and along West street by double track, to Chambers street. Also, through and along Tenth street, connecting with the double track in Avenue C, by single track to Avenue D; thence through and along Tenth street, by double track, to the East River. Also, connecting with the double track on Tenth street, through and along Avenue D, by single track, to Eleventh street; thence through and along Eleventh street, by single track, to and connecting with the double track on Avenue C, being the route described in Chapter 19 of the Laws of 1871.

The Chambers Street and Grand Street Ferry Line.

Commencing at the foot of Roosevelt Street, East River, thence through, upon and along South street, with double tracks to James Slip; thence through, upon and along James Slip, with double tracks, to New Chambers street; thence through, upon and along New Chambers street to Chatham street, with double tracks; thence across Chatham street to Chambers street, with single track; thence through, upon and along Chambers street, with single track, to Pavonia Avenue Ferry, foot of Chambers street, North River; thence returning, with single or double tracks, through, upon and along West street to Duane street; thence through, upon and along Duane street, with single track to and across Chatham street to connect with their double tracks at New Chambers street. Also from New Chambers street, at Madison street, through, upon and along Madison street, with double tracks to Grand street; thence through, upon and along Grand street, with single or double tracks to the ferry at the foot of Grand street. Also, from Madison street, at Jackson street, through, upon and along

Jackson street, with double or single tracks to Cherry street; thence through, upon and along Cherry street, with double or single tracks to the East River; thence through, upon and along East street, with double or single tracks, to connect with their tracks at the foot of Grand street, East River, being the route described in the resolution of the Common Council of the City of New York, on December 30, 1889.

The Broadway Surface Line.

Commencing at the southerly end of Broadway near the Battery and running thence with double tracks through and along Broadway, and across Fourteenth street to and along Union Square to a point at or near the intersection of Fifteenth street and West Union Square, being the route described in the resolution of the Common Council of the City of New York, adopted December 5, 1884.

South Ferry Line.

Commencing at the northerly side of Vesey street; thence through, upon and along Church street, with double track to Morris street; thence through, upon and along Morris street, with a double track to Greenwich street; thence through, upon and along Greenwich street, with a double track to Battery Place; thence through, upon and along Battery Place with a double track to State street; thence through, along and upon State street with a single track, to Whitehall street; thence through, upon and along Whitehall street, with a single track to the South Ferry; returning through, upon and along Whitehall street to Bowling Green; thence through, upon and along the southerly side of Bowling Green to connect with double tracks at Battery Place, being the route described in Chapter 508 of the Laws of 1874.

The Metropolitan Cross-Town Line.

Commencing upon East street, at or near the Grand street Ferry, and running thence through, upon and along East street, with a double track to Delancey slip or street; thence through, upon and along Delancey street, with a double track, to the Bowery; thence through, upon and across the Bowery to Spring street; thence through, upon and along Spring street, with a double track, to South Fifth avenue; thence through, upon and along South Fifth avenue, with a double track, to Fourth street; thence through, upon and along Fourth street, with double track, to MacDougal street; thence through, upon and along MacDougal street, with a double track, to Waverly place; thence through, upon and along Waverly place, to Christopher street, with a double track; thence through and along Waverly place, from Christopher to Bank street with a single track; thence through, upon and along Bank street, with a double track, to Greenwich avenue; thence through, upon and along Greenwich avenue, with a double track, to Thirteenth and Horatio streets; thence through, upon and along Thirteenth street and Horatio street, with a single track, to Eighth avenue; thence through, upon and across Eighth avenue to Thirteenth street; thence through, upon and along Thirteenth street, with a double track to Thirteenth avenue; thence, through, upon and along Thirteenth avenue, with a double track, to Fourteenth street, being the route described in the resolution of the Common Council of the City of New York, adopted December 24, 1889.

The Lexington Avenue and Pavonia Ferry Line.

Commencing at Forty-second street, in the City of New York, at a point of connection with the tracks of the Houston, West Street & Pavonia Ferry Railroad Company, at the junction of said street with Lexington Avenue; thence on or over said Lexington Avenue,

with double tracks, to Harlem River, with further constructions and extensions from the junction of One Hundred and Sixteenth Street and Lexington Avenue, through One Hundred and Sixteenth Street to Morningside Park and to the East River, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

The Columbus and Ninth Avenue Line.

Commencing in Columbus Avenue, in the City of New York, at or near Sixty-fourth street, there to connect with the existing double track of the Ninth Avenue Railroad Company in said Avenue; thence running across the surface of the Boulevard and upon, along and over the surface of Columbus Avenue (formerly named Ninth Avenue), with double tracks to One Hundred and Tenth street; also from Columbus Avenue, with double tracks through and along One Hundred and Sixth street to Amsterdam Avenue, to connect with the existing double tracks in Amsterdam Avenue (formerly named Tenth Avenue), now owned by the Ninth Avenue Railroad Company, being the route described in the resolution of the Common Council of the City of New York, adopted October 10, 1892.

Fort Lee Ferry Extension.

Commencing at the intersection of One Hundred and Twenty-fifth street and Amsterdam (formerly Tenth) avenue, running thence westerly, through One hundred and Twenty-fifth street to the Boulevard, thence northerly through the Boulevard to One Hundred and Thirtieth street and thence westerly, through One hundred and Thirtieth street westerly to Twelfth avenue, to a point on the west side of said avenue at or near Manhattan street and at or near Fort Lee Ferry, being the route described in the resolution of the Common Council of the City of New York, adopted December 19, 1893.

Columbus and Ninth Avenue Railroad Connection and Extension on One hundred and Ninth Street.

Commencing at the intersection of Columbus Avenue and One Hundred and Ninth Street, and connecting there by suitable curves, switches and appliances with the road of the Columbus and Ninth Avenue Railroad Company, running thence easterly with double tracks, through, upon and along One Hundred and Ninth Street to Manhattan Avenue; thence northerly, upon Manhattan Avenue, with double tracks, to the southerly side of Cathedral Parkway (formerly One Hundred and Tenth street), there to unite with an extension or branch of the Metropolitan Street Railway Company, being the route described in the resolution of the Common Council of the City of New York, adopted September 18, 1894.

Metropolitan Street Railway Connection and Extension on Manhattan Avenue.

Commencing at the intersection of Manhattan Avenue and One Hundred and Sixteenth street, and connecting there by suitable curves, switches and appliances with the road of the Metropolitan Street Railway Company, running thence southerly, with double tracks, through, upon and along Manhattan Avenue to the southerly side of Cathedral Parkway (formerly One Hundred and Tenth street), there to unite with an extension or branch of the Columbus and Ninth Avenue Railroad Company, being the route described in the resolution of the Common Council of the City of New York, adopted September 18, 1894.

Houston, West Street & Pavonia Ferry Connection and Extension on Ridge and Montgomery streets.

Commencing at the intersection of Houston Street and Avenue C in the City of New York, connecting there by suitable curves and appliances with the route

of the Houston, West Street & Pavonia Ferry Railroad Company, running thence through, upon and along Houston Street over the single track in said street of the road of the Forty-second Street and Grand Street Ferry Railroad Company to Ridge Street; thence (with suitable curves and appliances at or near Ridge Street) through, upon and along Ridge Street with a single track to the said point of union, and by the construction, maintenance and operation of an extension or branch of the said railroad formerly of the Chambers Street and Grand Street Ferry Railroad Company, commencing at the intersection of Montgomery and Madison Street, connecting there by suitable curves and appliances with the said road formerly of the Chambers Street and Grand Street Ferry Railroad Company, running thence with a single track through, upon and along Montgomery street to Division street; thence through, upon and across Division street to Ridge street; thence through, upon and along Ridge street with a single track to the said point of union, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Houston, West Street & Pavonia Ferry Railroad Connection and Extension on Pitt and Gouverneur Streets.

Commencing at the intersection of Third Street and Avenue C, connecting there by suitable curves and appliances with the tracks of the Houston, West Street & Pavonia Ferry Railroad Company, and running thence with an additional single track through, upon and along Avenue C to and across Houston Street to Pitt Street, there to connect by suitable curves and appliances with the existing single track of the Houston, West Street & Pavonia Ferry Company in Pitt Street, and running thence through, upon and along Pitt Street over the said single track in said street to Stanton Street; thence (with suitable connections and

curves at Stanton Street) upon and across Stanton Street with a single track; thence through, upon and along Pitt Street to said point of union; and by the construction, maintenance and operation of an extension or branch of the railroad formerly of the Chambers Street and Grand Street Ferry Railroad Company, commencing at the intersection of Gouverneur Street and Madison Street, connecting there by suitable curves and appliances with the said road formerly of the Chambers Street and Grand Street Ferry Railroad Company, running thence, with a single track, through, upon and along Gouverneur Street to and across Grand Street; thence with a single track through, upon and along Pitt Street to said point of union, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Metropolitan Cross-Town Connection and Extension on West Third Street.

Commencing at the intersection of South Fifth Avenue and West Third street, connecting there by suitable curves and attachments with the road of the Metropolitan Cross-Town Railroad Company, and running thence westerly with double tracks through, upon and along West Third street to a point of union with an extension or branch of the railroad of the Sixth Avenue Railroad Company, at or near Sullivan street, being the route described in the resolution of the City of New York, adopted September 29, 1892.

Metropolitan Cross-Town Connection and Extension on Broome, Sullivan and Watts Streets.

From Spring street on South Fifth Avenue to Canal street and West Broadway, from a connection therewith on South Fifth Avenue, at the intersection of Broome street, by suitable curves and appliances; thence with double tracks through, upon and along Broome street to Sullivan street; thence through, upon

and along Sullivan street with double tracks to Watts street; thence through, upon and along Watts street with double tracks to a union with the route and road of the Houston, West Street & Pavonia Ferry Railroad Company, now on West street, and to connect also with Desbrosses Street Ferry, said branch over said streets to said union of the routes or road of said Metropolitan Street Railway Company when built on South Fifth Avenue to Broome street as aforesaid, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Metropolitan Cross-Town connection and Extension on South Fifth Avenue.

Commencing on South Fifth Avenue and Spring street, connecting there by suitable curves and appliances with the existing road of the Metropolitan Cross-Town Railway Company, and running thence southerly with double tracks through, up and along South Fifth Avenue to Broome street, being the route described in the resolution of the Common Council of the City of New York, September 29, 1892.

Houston, West Street & Pavonia Ferry Connection and Extension on Lexington Avenue.

Along and over Lexington Avenue from Twenty-seventh street to Thirty-fifth street by double track, and by single track from Thirty-fifth street to Thirty-sixth street, being the route described in the resolution adopted by the Common Council of the City of New York, September 29, 1892.

Metropolitan Street Railway Connection and Extension on West Broadway.

Commencing at the intersection of West Broadway and Duane Street, and connecting there by suitable

curves, switches and appliances with the Metropolitan Street Railway Company's existing tracks in said Duane Street, running thence southerly in or upon West Broadway, with a single track to Chambers Street, and thence southerly with double tracks, in or upon West Broadway (a portion of which was formerly College Place), to Vesey Street, there to connect with a double-track extension or branch of the railroad route of [the Central Park, North and East River Railroad Company, being the route described in the resolution of the Common Council of the City of New York, adopted April 14, 1896.

3. The Lessor owns the following described pieces and parcels of land with the buildings and improvements thereon, situated, lying and being in the County of New York, City of New York and State of New York :

A. Real Estate not subject to the Lessor's General and Collateral Trust Mortgage.

Lexington Avenue and Thirty-third Street Property

All that certain plot, piece or parcel of land with buildings thereon erected, situate, lying and being in the City and County of New York, bounded and described as follows ; Beginning at a point formed by the intersection of the easterly line of Park (formerly Fourth) Avenue, with the northerly line or side of Thirty-second Street ; running thence northerly along the easterly side of Park Avenue, one hundred and ninety-seven (197) feet six (6) inches to the southeasterly corner of Park Avenue and Thirty-third Street ; thence easterly along the southerly side of Thirty-third Street, four hundred and twenty-five (425) feet to the southwesterly corner of Thirty-third Street and Lexington Avenue ; thence southerly along the westerly side of Lexington Avenue, one hundred forty-seven (147) feet, eight (8) inches ; thence westerly

parallel or nearly so with Thirty-third Street, forty-nine (49) feet; thence southerly and nearly parallel with Lexington Avenue, forty-nine (49) feet ten (10) inches; to the northerly side of Thirty-second Street, at a point distant forty-eight (48) feet seven (7) inches westerly from the westerly side of Lexington Avenue; thence westerly along the northerly side of Thirty-second Street, three hundred seventy-six (376) feet five (5) inches to the point or place of beginning; being the same premises heretofore conveyed to The New York and Harlem Railroad Company by the following instruments, to wit: Deed from Mary Murray, dated January 8th, 1849, and recorded in the office of the Register in and for the County of New York in Liber 518 of Conveyances, page 420; deed from Nathan Jackson and wife, dated February 22nd, 1849, and recorded in said Register's office in Liber 558 of Conveyances, page 215; deed from John Alstyne, dated December 13th, 1851, and recorded in said Register's office in Liber 590 of Conveyances, page 226; deed from Henry Abell and wife, dated September 1st, 1865, and recorded in said Register's office, in Liber 947 of Conveyances, page 251; deed from Jesse A. Marshall and wife, John F. Marshall and William H. Wilkins and wife, dated June 1st, 1875, and recorded in said Register's office in Liber 1333 of Conveyances, page 51; deed from Peter S. Bogert and wife, dated December 10th, 1849, and recorded in the said Register's office in Liber 537 of Conveyances, page 447, and which premises were conveyed by The New York and Harlem Railroad Company to Oren Boot, Junior, by deed bearing date September 6th, 1899, and recorded in the office of the Register of the City and County of New York on September 11th, 1899, in block seven (Conveyances), section 3, liber 65, page 136; block number 888, and section 5, liber 63, page 307, block number 1497, and were conveyed by Oren Root, Jr., to the Lessor by indenture dated September 22nd, 1899, subject to a mortgage made by the said Root to the Mutual Life Insur-

ance Company, dated September 20th, 1899, to secure the payment of the sum of $950,000 and interest.

85th and 86th Streets and Madison Avenue Property.

Also, all those certain lots, pieces or parcels of land, with the buildings and improvements thereon, situate, lying and being in the City and County of New York, bounded and described as follows: Beginning at a point formed by the intersection of the northerly side of Eighty-fifth Street and the westerly side of Madison Avenue, and running thence westerly along the northerly side of said Eighty-fifth Street, two hundred and twenty (220) feet; thence northerly parallel with Madison Avenue two hundred and four (204) feet four (4) inches, to the southerly side of Eighty-sixth Street; thence easterly along the southerly side of Eighty-sixth street, two hundred and twenty (220) feet to the southwesterly corner of Eighty-sixth Street and Madison Avenue, and thence southerly along the westerly side of Madison Avenue two hundred four (204) four feet (4) inches to the point or place of beginning; being the same premises heretofore conveyed to the said lessor by the following instruments, to wit: Deed from Webster Wagner and wife, dated November 5th, 1881, and recorded in the office of the Register in and for the County of New York, in Liber 1923 of Conveyances, page 203; deed from George B. Heath, dated December 3rd, 1886, and recorded in said Register's Office, in liber 1998 of Conveyances, page 468; deed from Clark R. Gavit, dated December 22nd, 1885, and recorded in said Register's Office in Liber 2273 of Conveyances, page 333; deed from Webster Wagner and wife, dated November 12th, 1881, and recorded in said Register's office, in Liber 1912 of Conveyances, page 342; deed from Warren S. Crane, dated November 21st, 1889, and recorded in said Register's office in Liber 2273 of Conveyances, page 331, and deed from James M. Gotendorf and others, dated August 12th, 1885, and recorded in said

Register's office, in liber 1912 of Conveyances, page 347; and which premises were conveyed by the New York and Harlem Railrood Company to Oren Root, Junior, by deed bearing date September 6th, 1899, and recorded in the office of the Register of the City and County of New York on September 11th, 1899, in Block seven (Conveyances) section 3, liber 65, page 136; block number 888, and section 5, liber 63, page 307; block number 1497, and were conveyed by Oren Root, Jr., to the Lessor by indenture dated September 22nd, 1899, subject to a mortgage made by the said Root to the Mutual Life Insurance Company dated September 20th, 1899, to secure the payment of the sum of $950,000 and interest.

146th Street, 147th Street, Lenox and 7th Ave. Property.

All that certain lot, piece or parcel of land situate, lying and being in the Twelfth Ward, in the City of New York, bounded and described as follows: Beginning at a point on the westerly side of Lenox Avenue (formerly Sixth Avenue) at a point distant one hundred (100) feet north of the corner formed by the intersection of the northerly side of One hundred and Forty-sixth Street with the westerly side of Lenox Avenue, running thence northerly along the westerly side of said Lenox Avenue to the corner formed by the intersection of the westerly side of Lenox Avenue and the southerly side of One hundred and Forty-seventh Street, running thence westerly along the southerly side of One hundred and Forty-seventh Street, to the corner formed by the intersection of the southerly side of One hundred and Forty-seventh Street with the easterly side of Seventh Avenue, running thence southerly along the easterly side of said Seventh Avenue to the corner formed by the intersection of the easterly side of Seventh Avenue with the northerly side of One hundred and Forty-sixth Street, running thence easterly along

the northerly side of One hundred and Forty-sixth Street to a point distant four hundred and forty (440) feet westerly from the corner formed by the intersection of the northerly side of One hundred and Forty-sixth Street with the westerly side of Lenox (formerly Sixth Avenue), thence running northerly and parallel with the westerly side of Lenox Avenue aforesaid one hundred (100) feet, thence running eastwardly and parallel with the northerly side of One hundred and Forty-sixth Street four hundred and forty (440) feet to the point or place of beginning; conveyed by indenture dated September 30, 1897, from Metrodolitan Traction Company to the Lessor and which indenture was recorded in the Office of the Register of the City and County of New York, on October 11, 1897, in block series (Conveyances), Section 7, Liber 48, page 99, and indexed under Block Number 2015 on the Land Map of the City of New York, and being part of the land which was conveyed to the Metropolitan Traction Company by Charles D. Lane and Rosa G., his wife, by deed dated the 1st day of July, 1894, and recorded in the office of the Register of the City and County of New York on the 17th day of July, 1894, in block series (Conveyances) Section 7, Liber 22, page 384, in block 2015 on the land map of the City of New York, and being subject to a mortgage of $150,000, with 5 per cent. per annum given by John D. Crimmins to the Mutual Life Insurance Company, dated February 20, 1893; due February 29, 1894, and being also subject to the restrictions and covenants contained in a certain grant of the Mayor, Aldermen and Commonalty of the City of New York to Mary G. Pickney, dated the seventh day of November, 1867, and recorded in the Register's Office of the City and County of New York, in Liber 1041 of Conveyances, page 1, on the 15th day of November, 1867, in so far as the same affects the said described premises.

Dry Dock Street Property.

All that certain lot, piece or parcel of land, with the building thereon erected, situate, lying and being in the City of New York, in the Eleventh Ward of said City, in section two (2) in block 380 on the Land Map thereof, and bounded and described as follows :

Beginning at a point on the westerly side of Dry Dock Street at the middle of the party wall distant southerly from the point or angle formed by the intersection of the westerly line of Dry Dock Street and the southerly line of Eleventh Street, ninety-seven (97) feet five (5) inches, or thereabouts, running thence westerly parallel or nearly so with Eleventh Street and part of the way through a party wall, eighty-four (84) feet, thence northerly and parallel, or nearly so, with Dry Dock Street, twenty-two (22) feet one (1) inch, thence easterly parallel or nearly so with Eleventh Street, eighty-four (84) feet to the westerly line of Dry Dock Street, thence southerly along the westerly line of Dry Dock Street, twenty-two (22) feet one (1) inch to the point or place of beginning ; be the said dimensions more or less. Being the same premises conveyed to the Metropolitan Traction Company of New York by Joseph Brangean of the City of New York, by deed dated November 23d, 1892, and recorded the same day in the office of the Register of the City and County of New York in Block Series (Conveyances) Section 2, Liber 14, page 444, and indexed under Block number 380, and which were conveyed by the Metropolitan Traction Company of New York to the Lessor by indenture dated September 15, 1897, and recorded in the office of the Register of the City and County of New York on September 28th, 1897, in block series (Conveyances) Section 2, Liber 56, page 229, and indexed under Block Number 380.

Front Street Property.

All those three certain lots, pieces or parcels of land, with the buildings and improvements erected thereon, situate, lying and being in the City of New York, and known as Nos. 13, 15 and 17 Front Street, which, taken together, according to a survey thereof made August, 1883, are bounded and described as follows :

Beginning at the northeasterly corner thereof at a point in the southerly line or side of Front Street, opposite the middle of a party wall and distant thirty-three (33) feet westerly from the southwesterly corner of Front and Broad Streets, and running thence southwardly parallel, or nearly so, with Broad Street, and along the middle of said party wall, one hundred and five (105) feet to a point opposite a fence ; thence westwardly along said fence and parallel, or nearly so, with Front Street eighteen (18) feet nine and a half (9½) inches to an angle in said fence ; thence in a northwesterly direction and along said fence to another angle therein, four (4) feet and six (6) inches ; thence again westwardly parallel, or nearly so, with Front Street, and along said fence, the brick wall of a five story building and another fence, thirty-seven (37) feet four and three-quarter (4¾) inches to the wall of a five story brick building ; thence northwardly and along said wall to an angle therein twenty (20) feet ; thence again westwardly along said wall three (3) feet six (6) inches to the middle of a party wal;l thence northwardly along the middle of said party wall and parallel, or nearly so, with Moore Street, eighty (80) feet to the southerly side of Front Street, and thence eastwardly along said southerly side of Front Street, sixty-five (65) feet and two (2) inches to the point or place of beginning.

That portion which is known as No. 13 Front Street being subject to an agreement made by Mulford Martin with Elias H. Herrick, dated May 28th, 1840.

Being the same property which was conveyed to the Metropolitan Traction Company of New York by John

D. Crimmins, by deed dated the 29th day of September, 1892, and recorded in the office of the Register of the City and County of New York on the same date in block series (Conveyances), section 1, Liber 10, page 472, block No. 4, and which was conveyed to the Lessor by deed dated September 11, 1896, and recorded in the office of said Register on September 28th, 1897, in block series (Conveyances), Section 1, Liber 43, page 361, block number 4.

Ninth Avenue Property.

All those forty certain lots and parts of lots or gores of land, situate, lying and being in the City of New York, in the Twenty-second Ward of said city, in section four in block 1044 on the Land Map thereof, which, taken together as one parcel, are bounded and described as follows, viz: Beginning at a point on the easterly side or line of the Ninth Avenue which is distant sixty-five feet northerly from the northerly line of Fifty-third Street; running thence northerly along said easterly line of Ninth Avenue one hundred and thirty-five (135) feet, ten (10) inches, to the southerly line of Fifty-fourth Street; thence easterly along said southerly line of Fifty-fourth Street, five hundred and twenty-five (525) feet, and to a point distant two hundred and seventy-five (275) feet, westerly from the point of intersection of the southerly line of Fifty-fourth Street with the westerly line of Eighth Avenue; thence southerly on a line at right angles with the said southerly line of Fifty-fourth Street one hundred and sixty-five (165) feet, eleven and three-eighth (11⅜) inches; thence in a northwesterly direction, eighty-one (81) feet, two (2) inches to a point distant thirty-eight (38) feet, two (2) inches, north of Fifty-third Street; thence westerly eighty-two (82) feet to a point forty-nine (49) feet north of Fifty-third Street; thence westerly one hundred and twenty-nine (129) feet and one (1) inch to a point distant fifty-two (52) feet north on Fifty-third street; thence westerly one hundred and forty-one

(141) feet to a point distant fifty-one (51) feet, eight (8) inches, north of Fifty-third Street; thence westerly sixty-one (61) feet five (5) inches, to a point distant fifty-six (56) feet five (5) inches, north of Fifty-third Street; thence westerly thirty-one (31) feet, four (4) inches, to the easterly line of Ninth Avenue, at the point or place of beginning; together with all the buildings and erections now existing thereon; being part of the premises conveyed to John D. Crimmins by The Eighth Avenue Railroad Company, a corporation created and existing under the laws of the State of New York, by deed bearing date the 19th day of July, 1892, and recorded in the office of the Register of the City and County of New York on the 3d day of August, 1892, in Block Series of Conveyances, Section 4, Liber 17, page 78; and by said John D. Crimmins conveyed to the Metropolitan Traction Company by deed dated September 29th, 1892, recorded same day in Liber 18, (Conveyances), page 138, section 4, Blocks 1044 and 1045; and by said Metropolitan Traction Company to the Lessor by deed dated September 11th, 1896, and recorded in the office of the Register of the City and County of New York, on the 28th day of September, 1897, in block series (Conveyances), Section 4, Liber 62, p. 11, and indexed under Block Numbers 1044 and 1045 on the Land Map of the City of New York.

Subject to a certain mortgage bearing date the 19th day of July, 1892, made by John D. Crimmins to the Eighth Avenue Railroad Company, to secure the payment of the sum of Two hundred and fifty thousand (250,000) dollars and interest on which $50,000 has been paid.

Fifty-third Street Property.

All that certain gore, lot, piece or parcel of land with the building thereon situate, lying and being on the northerly side of 53d Street in the City of New York, in the twenty second ward of said city, in section

4, in block 1044 on the land map thereon, and bounded and described as follows:

Beginning at a point on the northerly side of Fifty-third Street at a point distant four hundred and thirty-four (434) feet eleven (11) inches easterly from the corner formed by the intersection of the easterly side of Ninth Avenue with the northerly side of Fifty-third Street, running thence northerly and parallel with Ninth Avenue thirty-nine (39) feet three and one-half (3½) inches or thereabouts to the southerly line of lands formerly of Jacob Harsen; thence easterly along the said line of lands formerly of Jacob Harsen, twenty-five (25) feet or thereabouts, thence southerly and again parallel with Ninth Avenue thirty-seven (37) feet five and one eighth (5⅛) inches or thereabouts to the northerly side of Fifty-third Street, and thence westerly along said northerly side of Fifty-third Street twenty-five (25) feet to the point or place of beginning.

Being the same premises conveyed to John D. Crimmins of New York City by Margaret F. Miller by deed dated August 3rd, 1892, and recorded in the office of the Register of the City and County of New York, August 3rd, 1892, in Block series (Conveyances) Section 4, Liber 17, page 87, and by the said John D. Crimmins conveyed to the Metropolitan Traction Company of New York by deed dated September 29th, 1892, and recorded in the office of the Register of the City and County of New York on the 29th day of September, 1892, in Block Series (Conveyances) section 4, Liber 18, page 135, block number 1044, and by the said Metropolitan Traction Company of New York conveyed to the lessor by deed dated September 15, 1897, and recorded in the office of said Register on September 28, 1897, in block series (Conveyances) Section 4, Liber 62, page 9, block number 1044.

B. Real Estate subject to the Lessor's General and Collateral Trust Mortgage.

Ninety-six Street and First Avenue Property.

All that certain block, piece or parcel of land with the buildings and improvements thereon, situate, lying and being in the Twelfth Ward of the City of New York, and bounded and described as follows, viz: Northerly by the middle line of Ninety-sixth Street; southerly by the middle line of Ninety-fifth Street; westerly by the middle line of First Avenue, and easterly, by the East or Harlem River. And, also the land under water, and all pre-emptive rights, in, upon and under the East or Harlem River, lying in front of the above described block; being the premises conveyed by Daniel B. Hasbrouck and wife to the Metropolitan Street Railway Company, by deed bearing date April 7, 1897, and recorded in the office of the Register of the City and County of New York, in block series (Conveyances), Section 5, Liber 49, page 25.

Avenue C Depot Property.

All those two certain lots, pieces or parcels of lands, with the buildings and improvements thereon, situate in the Eleventh Ward of the City of New York, and which taken together are bounded and described as follows:

Beginning on the northerly line or side of Eleventh Street, distant one hundred and eighty-three feet easterly from the corner formed by the intersection of the northerly side of Eleventh Street with the easterly side of Avenue C, as the same is now laid out and widened, which said widening was not noted or allowed for on the map hereinafter mentioned, and running thence northerly and parallel with Avenue C one hundred and three (103) feet three (3) inches to the centre line of the block between Eleventh and Twelfth Streets;

thence easterly along said centre line of the block and parallel with Eleventh Street fifty (50) feet; thence southerly and parallel with Avenue C one hundred and three (103) feet three (3) inches to the northerly side or line of Eleventh Street, and thence westerly along the same fifty (50) feet to the point or place of beginning.

All that certain lot, piece or parcel of land with the buildings thereon erected, situate, lying and being in the Eleventh Ward in the City of New York, and bounded and described as follows: Beginning at a point on the northerly side of Tenth street, distant two hundred and thirty-three (233) feet easterly from the northeasterly corner of Tenth Street and Avenue C, and thence northerly and parallel with Avenue C eighty (80) feet to the point or place of beginning, running northerly from that point and parallel with Avenue C fourteen (14) feet and nine (9) inches; thence easterly and parallel with Tenth Street twenty-five (25) feet; thence southerly and again parallel with Avenue C fourteen (14) feet and nine (9) inches; thence westerly and again parallel with Tenth Street, twenty-five (25) feet, to the point or place of beginning.

All that certain piece of land, with the buildings thereon situate, lying and being in the Eleventh Ward of the City of New York on the northerly side of Tenth Street and beginning at a point two hundred and eight (208) feet distant easterly from the northeasterly corner of said Tenth Street and Avenue C, and running thence easterly along the northerly side of Tenth Street, twenty-five (25) feet; thence northerly on a line parallel with Avenue C ninety-four (94) feet and nine and one half (9½) inches, to the centre line of the block between Tenth and Eleventh Streets; thence westerly on a line parallel with Tenth Street twenty-five (25) feet; thence southerly on a line parallel with Avenue C ninety-four (94) feet nine and one half (9½) inches, to Tenth Street, aforesaid, the place of beginning.

Also, six other lots, pieces and parcels of ground and premises, with the buildings thereon, situate,

lying and being in the Eleventh Ward of the said City of New York and bounded and described as follows: Beginning at a point on the southerly side of Eleventh Street, distant one hundred and eight (108) feet easterly from the south-easterly corner of Avenue C and Eleventh Street; and running thence easterly and along the southerly side of Eleventh Street aforesaid, seventy-five (75) feet; thence southerly and parallel with said Avenue C one hundred and eighty-nine (189) feet and seven (7) inches, more or less, to the northerly side of Tenth Street; thence westerly, and along the northerly side of Tenth Street aforesaid, seventy five (75) feet, and thence northerly, and parallel with the said Avenue C one hundred and eighty-nine (189) feet and seven (7) inches, more or less, to the place of beginning.

All those two certain lots, pieces or parcels of land, with the buildings thereon, situate, lying and being on the northerly side of Eleventh Street, in the Eleventh Ward of the City of New York, and known and distinguished on a certain map filed by Frederick De Peyster, Master in Chancery in the office of the Register of the City and County of New York, entitled "map of two hundred and forty lots of land situate at Burnt Mill Point in the Eleventh Ward of the City of New York," by the Numbers Eighty-five (85) eighty-six (86) and are more fully bounded and described as follows: Beginning at a point on the northerly side of Eleventh Street, in said city, distant two hundred and thirty-three feet (233) easterly from the northeasterly corner of Avenue C and Eleventh Street, running thence northerly and parallel with Avenue C one hundred and three (103) feet three (3) inches; thence easterly and parallel with Eleventh street fifty (50) feet; thence southerly and parallel with Avenue C one hundred and three (103) feet three (3) inches to Eleventh street aforesaid, and thence westerly along the same fifty (50) feet to the place of beginning. Also, all those four certain lots, pieces or parcels of land situate, lying and being in the Eleventh Ward of the City of New York,

bounded and described as follows: Beginning at a point on the southerly side of Eleventh street distant one hundred and eighty-three (183) feet easterly from the easterly line of Avenue C, running thence southerly and parallel with Avenue C ninety-four (94) feet nine (9) inches to the centre line of the block, running thence easterly along said centre line one hundred (100) feet; thence northerly and parallel with Avenue C ninety-four (94) feet nine (9) inches to the southerly line or side of Eleventh street; thence westerly along the southerly line of Eleventh street one hundred (100) feet to the place of beginning.

No. 413 East Tenth Street Property.

All that certain lot, piece or parcel of ground, with the building thereon erected, which on a certain map filed by Frederick De Peyster, Master in Chancery (with his certificate endorsed thereon, dated February 1st, 1837) in the office of the Register for the City and County of New York, entitled "Map of 240 lots of land situated at Burnt Mill Point in the Eleventh Ward of the City of New Yor " consisting of one lot of land thereon designated by the number "144" (one hundred and forty-four bounded as follows, viz.:

Commencing at a point on the northerly side of Tenth Street, distant one hundred and ninety-three (193) feet southeasterly from the northeasterly corner of Avenue C and Tenth Street; running thence northeasterly along lot 145 on said map ninety-four (94) feet nine (9) inches to the centre of the block; thence southeasterly along the centre of the block twenty-five (25) feet to lot 143 on said map; thence southwesterly along said lot 143 ninety four (94) feet nine (9) inches to Tenth Street, and thence northwesterly along Tenth Street twenty-five (25) feet to the point of beginning.

Lenox Avenue and One Hundred and Sixteenth Street Property.

All those certain lots or parcels of land situate lying and being in the Twelfth Ward of the City of New York, and which taken together are bounded and described as follows: Commencing at the corner formed by the intersection of the northerly line of One hundred and sixteenth Street with the westerly side of Lenox (formerly Sixth) Avenue, running thence northerly, along said westerly line of Lenox Avenue two hundred and one (201) feet ten (10) inches to the southerly line of One Hundred and Seventeenth Street; thence westerly, along said southerly line of One Hundred and Seventeenth Street two hundred (200) feet; thence southerly and parallel with Lenox Avenue two hundred and one (201) feet ten (10) inches to the northerly line of One Hundred and Sixteenth Street; thence easterly along said northerly line of One Hundred and Sixteenth Street two hundred (200) feet to the point or place of beginning.

Being the same premises conveyed by the Metropolitan Traction Company of New York to the Lexington Avenue and Pavonia Ferry Railroad Company by deed bearing date the 15th day of January, 1894, and recorded in the office of the Register in the City and County of New York in Block Series (Conveyances) Section 7, Liber 20, at page 456, etc., subject, however, to the existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

Lexington Avenue and Ninety-ninth Street Property.

All that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of New York, bounded and described as follows:

Beginning at the northeasterly corner of Fourth Avenue and Ninety-ninth Street, running thence northwardly along the easterly line of Fourth Avenue two hundred and one (201) feet ten (10) inches to the south-

erly line of One Hundredth Street; thence eastwardly along the southerly line of One Hundredth Street four hundred and five (405) feet; thence southwardly and parallel with Fourth Avenue two hundred and one (201) feet ten (10) inches to the northerly line of Ninety-ninth Street, and thence westwardly along the northerly line of Ninety-ninth Street four hundred and five (405) feet to the point or place of beginning.

Being the same premises conveyed by the Metropolitan Traction Company, of New York, to the Lexington Avenue and Pavonia Ferry Railroad Company by deed bearing date the 15th day of January, 1894, and recorded in the office of the Register in the City and County of New York, in Block Series (conveyances), Section 6, Liber 22, at page 157.

Subject, however, to the existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

Lexington Building.

All those certain lots, pieces or parcels of land with the building or buildings thereon erected, situate, lying and being in the Twelfth Ward of the City of New York, bounded and described as follows:

Commencing on the northerly side of Twenty-fifth Street, at a point distant one hundred and seven (107) feet and six (6) inches westerly from the corner formed by the intersection of the northerly line of Twenty-fifth Street with the westerly line of Third Avenue, and running thence westerly along the northerly line of Twenty-fifth Street, one hundred and eighty-seven (187) feet and six (6) inches or thereabouts, and thence running northerly and parallel, or nearly so, with Third Avenue one hundred and ninety-seven (197) feet and five (5) inches to the southerly side of Twenty-sixth Street and thence running easterly along the southerly side of Twenty-sixth Street one hundred and eighty-six (186) feet, or thereabouts, and thence running southerly and parallel with

Third Avenue ninety-eight (98) feet and nine (9) inches to the centre line of the block between Twenty-fifth and Twenty-sixth Streets, and thence running easterly along the said centre line of the block, six (6) inches, thence running southerly and parallel with Third Avenue, ninety-eight (98) feet and nine (9) inches to the northerly line of Twenty-fifth Street, being the same premises which were heretofore conveyed by the following conveyances, viz. :

By deed of Ruth A. Brown to the Metropolitan Traction Company of New York, recorded in Block Series (Conveyances) Section 3, Liber 30, at page 128, etc.

By deeds of John D. Crimmins to the Metropolitan Traction Company of New York, recorded in Block Series (Conveyances) Section 3, Liber 31, page 57, etc., and in Section 3, Liber 21, at page 408, etc., and in Section 3, Liber 26, at page 113, etc.

By Deed of Alonzo C. Monson to the Metropolitan Traction Company of New York, recorded in Block Series (Conveyances) Section 3, Liber 29, at page 176, etc.

Subject, however, to a existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

Belt Line Repair Shops.

All that certain lot, piece or parcel of land, together with the buildings and improvements thereon, lying and being in the Twenty-second Ward of the City of New York, situate on the North side of West Fifty-third Street, between the Tenth and Eleventh Avenues, and known as lot number 768 on a certain map of John Hopper's Estate, filed in the Register's Office of the City of New York on the 31st day of December, 1864, as map No. 660 and being bounded and described as follows :

Beginning at a point on the northerly side of Fifty-third Street distant four hundred and seventy-five

(475) feet westerly from the westerly side of Tenth Avenue, and running thence westerly along said northerly side of Fifty-third Street twenty-five (25) feet; thence northerly on a line parallel with Tenth Avenue forty-eight (48) feet three and three-quarters (3¾) inches; thence southwesterly twenty-five (25) feet or thereabouts to a point in a line distant forty-four (44) feet ten (10) inches northerly from the northerly side of Fifty-third Street, and thence southerly on a line parallel with Tenth Avenue forty-four (44) feet ten (10) inches to the northerly side of Fifty-third Street to the point or place of beginning.

Being the same premises conveyed to the Metropolitan Traction Company of New York by Bertha Volkening by deed dated the 30th day of March, 1895, and recorded in the office of the Register of the City and County of New York on the 30th day of March, 1893, in Block Series (Conveyances) Section 4, Liber 21, page 283.

And also all those certain lots, pieces or parcels of land, together with the buildings and improvements erected thereon, situate, lying and being in the Twenty-second Ward, of the City of New York and bounded and described as follows:

Beginning at a point three hundred feet easterly from the southeasterly corner of Eleventh Avenue and Fifty-fourth street; thence easterly along the line of Fifty-fourth street twenty-five (25) feet; thence southerly parallel with Eleventh Avenue, through the centre of the block to the line of property now or formerly owned by Garrit H. Striker one hundred and fifty-six (156) feet; thence northwesterly along the line of said property twenty-five feet (25) feet three and one quarter (3¼) inches; thence northerly parallel to Eleventh Avenue one hundred and fifty-two (152) feet six and one quarter (6¼) inches, to the point or place of beginning, be the said several dimensions more or less.

Being the same premises conveyed by Andrew Doerrschuck and wife to the Metropolitan Traction Company, of New York, by deed dated the 6th day of March, 1893, and recorded on the 8th day of March, 1893, in Block Series (Conveyances) Section 4, Liber 20, page 296.

Chambers Street Leasehold.

All the leasehold rights of the Lessor in and to all that certain lot, piece or parcel of land situate, lying and being in the Seventh Ward of the City of New York, bounded and described as follows: Beginning at the corner formed by the intersection of the southerly line of Cherry Street with the westerly line of East Street, and running thence southerly along the westerly line of East Street one hundred (100) feet and three (3) inches; thence westerly on a line parallel (or nearly so) with the southerly line of Cherry Street two hundred and forty-five (245) feet six (6) inches; thence northerly on a line parallel (or nearly so) with the westerly line of East Street twenty-six (26) feet one (1) inch; thon easterly parallel (or nearly so) with said line of Cherry Street nineteen (19) feet eleven (11) inches; thence northerly parallel (or nearly so) with the said line of East Street seventy-five (75) feet to the said line of Cherry Street; then easterly along said last mentioned line two hundred and twenty-five (225) feet to the place of beginning, and known by the Street Number 505 Cherry Street.

Also all the leasehold rights of the Lessor in and to all that certain lot, piece or parcel of land situate lying and being on Cherry Street, in said City, immediately adjoining the above described premises on the westerly side thereof, which said lot is about twenty (20) feet in width in front and rear and seventy-five (75) feet in depth on each side.

Twenty-fourth Street Leasehold.

All the leasehold rights of the Lessor in and to all those ten certain lots of ground, situate lying and being in the Sixteenth Ward of the City of New York, distinguished on a map of certain lands of Clement C. Moore, situate at Greenwich, in the City of New York, recorded in the office of the Register in and for the City and County of New York, in Liber 634 of conveyances, pages 411, by the numbers 905 (nine hundred and five) to 908 (nine hundred and eight) and 936 (nine hundred and thirty-six) to 941 (nine hundred and forty-one) all inclusive ; and bounded together as follows, viz.: Southwestwardly in front by Eleventh Avenue ; southwestwardly by the half distance line between Twenty-third Street and Twenty-fourth Street ; northwestwardly by lot numbered on the said map 935 (nine hundred and thirty-five) and northeastwardly by the said Twenty-fourth Street.

Containing together in width along the said Eleventh Avenue and on the northwestwardly side thereof, ninety-eight (98) feet and eight (8) inches, and on the northeastwardly and southwestwardly sides thereof. two hundred and twenty-five (225) feet, be the said several measurements more or less.

4. The Lessor operates as Lessee the following described railroads and railroad routes in said City of New York and State of New York under the leases hereinafter mentioned :

LINES LEASED TO AND OPERATED BY METROPOLITAN STREET RAILWAY COMPANY.

Lease of the Bleecker Street and Fulton Ferry Railroad Company to the Twenty-third Street Railway Company.

Dated January 10th, 1876, by which all the railroads and railroad routes of the lessor in the City of

New York are leased to the lessee for the term of ninety-nine years, said lease including the railroad operated along the streets described as follows :

Commencing at Twenty-third street and Eleventh Avenue, running along Eleventh Avenue to Fourteenth Street, running thence through and along Fourteenth Street to Fourth Avenue ; and also commencing at the intersection of Fourteenth street and Hudson street and thence running Southerly and Easterly through the City upon various streets, to Fulton Ferry.

Lease of Broadway and Seventh Avenue Railroad Company to Houston, West Street and Pavonia Ferry Railroad Company.

Dated May 13th, 1890, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor and any extension of said charter, said lease including the railroad operated along the streets, described as follows :

Commencing at Fifty-ninth Street and Seventh Avenue ; running thence through and along Seventh Avenue to Broadway ; thence through and along Broadway to Fifteenth Street, and thence through and along University Place and certain other streets to Barclay street ; and thence through Barclay Street and Park Place to Broadway ; and through Seventh Avenue, from Broadway to Greenwich Avenue to McDougall Street to West Fourth Street, and through Thompson and Sullivan Streets to West Broadway ; and also from Broadway and Twenty-third Street, through Twenty-third Street to Lexington Avenue, thence through Legington Avenue to Twenty-seventh Street.

Lease of the Central Park, North & East River Railroad Company to the Metropolitan Cross-Town Railway Company and the Houston, West Street & Pavonia Ferry Railroad Company.

Dated October 14th, 1892, by which all the railroads and railroad routes of the Lessor in the City of New York are leased to the Lessee for the unexpired term of the charter of the Lessor and any extensions of said charter, said lease including the railroad operated along the streets described as follows:

From Tenth Avenue and 59th Street through Tenth Avenue, West and other Streets to the South Ferry; and also from Tenth Avenue at 59th Street along 59th Street to First Avenue; and thence through various other streets and avenues to the said South Ferry.

Lease of the Eighth Avenue Railroad Company to Metropolitan Street Railway Company.

Dated November 23, 1895, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of ninety-nine years from January 1, 1896, said lease including the railroad operated along the streets described as follows:

Commencing at or near the intersection of Vesey Street and Broadway; thence running through Vesey Street to College Place, and through College Place, Church Street and Chambers Street to West Broadway, and through West Broadway to Canal Street, and through Canal Street to Hudson Street, and through Hudson Street to Eighth Avenue, and through and along Eighth Avenue to the point where the street or road commonly called the McCombs Dam Road intersects or meets Eighth Avenue; thence through and along the said McCombs Dam Road to or near the westerly end of the bridge known as McCombs Dam bridge, with an extension or branch running from the

junction of West Broadway and Canal Street to Broadway, and also the extension of its railroad from the junction of McCombs Dam Road along Eighth Avenue to the Harlem River.

Lease of the Forty-second Street and Grand Street Ferry Railroad Company to the Metropolitan Crosstown Railroad Company and The Houston, West Street & Pavonia Ferry Railroad Company.

Dated Aprfl 6th, 1893, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor and any extensions of the charter, said lease including the railroad operated along the streets described as follows:

Commencing at the ferry at the western extremity of Forty-second Street; thence through and along Forty-second Street, with a double track to Tenth Avenue; through and along Tenth Avenue to Thirty-fourth street; through and along Thirty-fourth Street, with a double track, to Broadway; through and along Broadway to Twenty-third Street; through and along Twenty-third Street to Fourth Avenue; through and along Fourth Avenue and Union Square, with a double track, to Fourteenth Street; through and along Fourteenth Street, with a double track, to Avenue A; through and along Avenue A, with a double track, to Second Street, and thence along Avenue A, with a single track, to First Street; through and along First Street and Houston Street, with a single track, to Cannon Street: through and along Cannon Street, with a single track, to Grand Street; through and along Grand Street, with a single track, to Goerck Street, and thence through and along Grand Street, with a double track, to Grand Street ferry at the foot of Grand Street, East River; and also from the intersection of Second Street and Avenue A through and along Second and Houston Streets, with a single track,

to Goerck Street; thence through and along Goerck Street with a single track, to Grand Street to Grand Street Ferry.

Lease of the New York and Harlem Railroad Company (city line) to the Metropolitan Street Railway Company.

Dated June 11, 1896, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of nine hundred and ninety-nine years from July 1, 1896; said lease including the railroad operated along the streets described as follows:

Commencing at intersection of Park Row, Ann Street and Broadway, to Centre Street, to Grand Street and Broome Street to Bowery, to Fourth Avenue, to Forty-second Street, to Madison Avenue, to One hundred and thirty-eighth Street; also on Eighty-sixth Street from Madison Avenue to First Avenue; on First Avenue to Ninety-third Street to Astoria Ferry. Also extension on Thirty-second and Thirty-third Streets, Lexington Avenue and Thirty-fourth Streets, from Fourth Avenue to Thirty-fourth Street Ferry.

Lease of the Ninth Avenue Railroad Company to the Houston, West Street & Pavonia Ferry Railroad Company.

Dated March 12th, 1892, by which all the railroads and railroad routes of the Lessor in the City of New York are leased to the Lessee for the term of ninety-nine years, said lease including the railroad operated along the streets described as follows:

Commencing at the intersection of Broadway and Fulton Street, runs through Fulton Street to Greenwich Street; thence through and along Greenwich Street to Ninth Avenue; thence through and along Ninth Avenue and Columbus Avenue to the Grand Boulevard; thence through and along the said Boule-

vard to Amsterdam Avenue (formerly called Tenth Avenue), and thence along Amsterdam Avenue to Manhattan Street, returning through Amsterdam Avenue, the Boulevard, Columbus Avenue, Ninth Avenue, Gansvoort Street and Washington Street to Fulton Street; thence through Fulton Street to Broadway to the place of beginning; also on Fifty-third Street from Broadway to Ninth Avenue.

Lease of the Second Avenue Railroad Company to the Metropolitan Street Railway Company.

Dated January 28th, 1898, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor and any extensions of said charter, said lease including the railroad operated along the streets described as follows:

Upon First Avenue and Second Avenue, through various streets and avenues in the City of New York to Peck Slip with extensions and connections from Eighth Avenue through the transverse road in Central Park, along Eighty-fifth Street, connecting with Madison Avenue.

Also extension from Bowery through Worth Street to Broadway.

Also an extension from Second Avenue and Tenth Street, through Tenth Street and Astor Place to Broadway.

Lease of Sixth Avenue Railroad Company to the Houston, West Street & Pavonia Ferry Railroad Company.

Dated February 1st, 1892, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of eight hundred years, said lease including the railroads operated along the streets described as follows:

Commencing at the intersection of Fifty-ninth Street

and Sixth Avenue, running thence southerly along Sixth Avenue to Carmine Street; thence through Carmine Street to Varick Street; thence through Varick Street to Canal Street; thence through Canal Street to Broadway; and also from the intersection of West Broadway and Canal Street; thence through and along West Broadway to Vesey Street; thence through Vesey Street to Broadway; and also through Church Street to Chambers Street, and through Chambers Street to Broadway; and also upon and along Lenox Avenue from One Hundred and Tenth Street to the Harlem River, also on West Third Street from Carmine to Sullivan Streets. Also on Fifty-third Street from Sixth Avenue to Seventh Avenue.

Lease of the Twenty third Street Railway Company to The Houston, West Street & Pavonia Ferry Railroad Company.

Dated April 25, 1893, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor, and any extension of said charter, said lease including the railroad operated along the streets described as follows:

Upon Twenty-third Street from the North to the East River, and upon Second Avenue from its intersection with Twenty-third Street to Twenty-ninth Street, and thence through Twenty-ninth Street, and also through Twenty-eight Street to First Avenue, and thence through First Avenue to Thirty-fourth Street.

Lease of the Third Avenue Railroad Company to Metropolitan Street Railway Company.

Dated April 13th, 1900, by which all the railroads and railroad routes of the Lessor in the City of New York are leased to the Lessee for the term of nine hundred and ninety-nine years, said lease including

the railroad operated along the streets described as follows:

Beginning at the intersection of Park Row and Broadway; thence extending along Park Row, the Bowery, Third Avenue to the Harlem River; also extending from the North River at the foot of 130th Street, thence through 130th Street, Manhattan Street and 125th Street to the East River; also extending from 125th Street through Amsterdam Avenue to the terminus of said Avenue; and also on One Hundred and Thirtieth Street from Third Avenue to a point at or near Lexington Avenue.

5. The said railroads and railroad routes owned by the Lessor are subject to sundry mortgages, securing outstanding bonds.

6. The companies whose lines are leased by the Lessor or a majority of whose capital stock is owned by the Lessor or owned by a Company whose lines are leased by the Lessor, are hereinafter referred to collectively as "Subsidiary Companies."

7. The Lessor's authorized capital stock is $52,000,000, all, or substantially all, of which is issued and outstanding.

8. The Lessee owns and operates street railroads and railroad routes in that portion of the County of Westchester, in the State of New York, adjoining the Borough of The Bronx of the City of New York, described as follows:

Beginning at North Third Avenue and Depot Place in the City of Mount Vernon, running thence northerly upon said Avenue to North Street.

Beginning at the intersection of North Street and North Third Avenue, running thence northerly through North Third Avenue to its intersection with Lincoln Avenue or White Plains Road.

Beginning at the intersection of East Lincoln Avenue, or White Plains Road, and North Third Avenue, thence easterly upon White Plains Road to North Columbus Avenue, or the White Plains Road, thence northerly upon North Columbus Avenue, or White Plains Road, to Burke's corners, opposite the New York Infant Asylum.

The Lessee also owns additional routes as follows :

Beginning at a point on Fourth Street in the Village of North Pelham at its intersection with the easterly boundary line of the City of Mt. Vernon, thence easterly along said Fourth Street and Winyah Avenue to the easterly boundary line of the Town of Pelham.

Beginning at a point on the White Plains Road at its intersection with the northerly line of the Town of Scarsdale, running thence southerly along White Plains Road to the northerly line of the Town of Eastchester.

Beginning at a point on the White Plains Road at its intersection with the northerly line of the Town of Eastchester, being the southerly line of the Town of Scarsdale, thence southerly along the White Plains Road to the northerly line of the City of Mt. Vernon. Also along the line which turns westerly from or near the school-house in upper New Rochelle, from the easterly boundary line of the Town of Eastchester, westerly along said road to the White Plains Road, thence southerly along the White Plains Road to Midland Avenue, or the road which is the continuation of Midland Avenue, thence southerly along said Midland Avenue, or said road which is a continuation of Midland Avenue, to Main Street and thence westerly along Main Street from said Midland Avenue, or its said continuation, to or near the depot of the New York & Harlem Railroad in the Village of Tuckahoe.

9. The Lessee proposes to construct or cause the construction of other lines of street surface railroads on routes owned or leased by it, in said portion of said County of Westchester, and also in said Borough of the Bronx, in the City of New York.

NOW, THEREFORE, the said Metropolitan Street Railway Company, party of the first part, in consideration of the covenants and agreements hereinafter contained to be kept and performed by the party of the second part, has granted, leased, and demised, and does by these presents grant, lease and demise to the Interurban Street Railway Company, party of the second part, and its successors and assigns, all the railroads and railroad routes of the Lessor, including those hereinbefore described, and all railroads and railroad routes which the Lessor may acquire or construct during the term of this lease, together with all the branches, connections, extensions, franchises, rights, powers and privileges of the Lessor to maintain, construct and operate railroads and railroad routes, and all renewals and extensions thereof; all the parcels of real estate hereinbefore described, and all other real estate of the Lessor, and the buildings and improvements thereon; also all the benefits and rights arising from all and any contracts, leases and agreements which the Lessor now has or to which it may be hereafter entitled, all of which franchises, rights, powers, privileges, contracts, leases, agreements and other property so leased and demised are subject to the various burdens and conditions by which they are held by the Lessor; all power houses, car houses, buildings, poles, trolleys, conduits, feeders, cables, wires and machinery for the production and distribution of electrical and other power, and all cars, equipment, tools and other personalty; including not only all of such property real and personal of the Lessor on the date hereof but all subsequent additions thereto as the result of purchase, or of merger or consolidation with any other corporation, or otherwise.

TO HAVE AND TO HOLD the same and each and every part thereof unto the Lessee and its successors and assigns for the full term of nine hundred and ninety-nine (999) years from the day of the date hereof as the same may have been or may be acquired by the Lessor,

to be used, maintained and operated by the Lessee; and, subject to the provisions of this agreement, the Lessor does hereby grant to the Lessee the control of the expenditure of any moneys belonging to the Lessor at the time of the taking over of the property of the Lessor under this lease, which are in the Treasury of the Lessor or to which the Lessor is or may be entitled, and the control of all rights of action for the collection of money, or for the enforcement of rights or privileges for the construction, maintenance and operation of railroads which are proper for such construction, maintenance or operation.

THIS INDENTURE FURTHER WITNESSETH, that the parties hereto have further covenanted and agreed and do hereby covenant and agree each with the other as follows:

I.—The Lessee shall at all times during the continuance of this lease maintain, manage, use, operate and keep in good working order, condition and repair at its own expense, all of said demised lines of railroad and other property and all extensions and branches thereof and all additions thereto.

II.—The Lessee shall pay, satisfy and discharge all municipal, county, state or government taxes and assessments, or other charges of any description whatever which during the term hereby granted may be imposed upon the property hereby demised or any part thereof, or upon any additions thereto and extensions thereof, or upon the Lessor or its franchises or business by reason of the property and franchises hereby demised, or by reason of any increase thereof or additions thereto or resulting from the use and operation by the Lessee of the property hereby demised, or of any extensions thereof or additions thereto, or from the construction of other lines in connection therewith; the intention of the parties being that the rents hereinafter agreed to be paid by the Lessee

shall not be in any wise impaired or diminished by any assessment, tax or charge upon the demised property, real or personal or upon any additions thereto, or extensions thereof, or upon the Lessor or Lessee by reason thereof. The Lessee shall not, however, be required hereunder to pay any lien, tax, assessment or charge so long as it shall in good faith contest the legality and validity of the same, unless the payment thereof be necessary to protect the demised property or some part thereof from forfeiture or sale.

III.—The Lessee shall also from time to time pay or cause to be paid all rentals and other sums of money which are or may be or become due or payable under or by reason of any leases and other contracts to which the Lessor is a party or to which any of the demised property is or may be subject, and the Lessee hereby assumes all the obligations of the Lessor under all such leases and contracts, and the Lessee agrees to pay all interest upon the funded debt of the Lessor and other fixed charges of the Lessor, provided that the Lessee shall not be required to pay the principal of any funded obligations of the Lessor or of its subsidiary companies except as hereinafter provided. All rentals and other payments made, as in this and the preceding article provided, shall be apportioned between the periods respectively preceding and succeeding the date of taking possession hereunder.

IV.—The Lessee shall also pay to the Lessor by way of rental for the railroads and property hereby demised and as part consideration for the other benefits to the Lessee hereunder accruing, an amount equal to seven per cent. per annum upon the existing capital stock of the Lessor and upon such additional capital stock of the Lessor as may hereafter be issued with the written consent of the Lessee as hereinafter provided. Such rental shall be paid in equal quarterly instalments upon the fifteenth day of January, April, July and

October, of each year, beginning with the fifteenth day of July, 1902. The Lessor may pay out of its existing surplus a dividend of one and three-quarters per cent. on the fifteenth day of April, 1902. The rentals herein provided for are based upon the present issued capital stock of the Lessor, viz. : $52,000,000, and such rentals shall not be increased in case of the issue of additional stock by the Lessor, unless such increase be expressly consented to in writing by the Lessee ; and the Lessor agrees that it will not create or issue any stock in excess of said sum of $52,000,000, without such written consent of the Lessee. It is the intention of the parties hereto that all of said rental shall be applied to the payment of dividends at the rate of seven per cent. per annum payable quarterly, upon said $52,000,000 of capital stock of the Lessor and upon any additional stock that may be issued with the consent of the Lessee as herein provided. The Lessee may at its option pay to any stockholder of the Lessor the proportionate part of any quarterly instalment of such rental which would be payable upon the stock held by such stockholder and upon the written request of the Lessor the Lessee shall pay any such quarterly instalment of rental hereunder to the stockholders of the Lessor as named in a certified list thereof to be supplied by the Lessor. The Lessee hereby guarantees to every present and future holder of said $52,000,000 of stock of the Lessor and of any additional stock of the Lessor which may be issued with the consent of the Lessee as herein provided, that dividends upon such stock at the rate of seven per cent. per annum shall be paid during the term of this lease in equal quarterly instalments upon the days of the year aforesaid, and the Lessee consents that the Lessor shall issue to the holders of such stock, stock certificates which shall recite such guaranty. The Lessee shall, however, be deemed to have complied with its guaranty as to any quarterly instalment of said dividend if it shall pay the amount thereof to the Lessor.

V.—The Lessee will replace any part of the demised property or of any additions thereto which may be destroyed by fire or other causes, and upon the expiration or earlier termination of this lease will deliver up said demised railroads and other property and all additions thereto in good order and repair, and shall likewise surrender the franchises, rights and privileges aforesaid unimpaired by any act or default of the Lessee; provided, however, that nothing herein contained shall require the Lessee to transfer to the Lessor any property absolutely transferred to the Lessee as hereinafter provided or any property which has become inoperative or has been destroyed. The Lessee may abandon or sell any track, real estate, equipment, franchise, rights or other property of the Lessor, which in the opinion of the Lessee, it is inexpedient to retain, provided that the continuity of no main line of railroad shall be broken by any such sale or abandonment, and provided such abandonment or sale shall not be in violation of the provisions of any mortgage or contract of the Lessor. The Lessee may from time to time in its discretion change or rechange the location or character of the whole or any part of any present or future line of railroad of the Lessor, or the motive power now used or hereafter used upon any such line, or the road-bed of any such line. The proceeds of the sale or exchange of any property of the Lessor which shall be sold or exchanged by the Lessee shall be reinvested in improvements upon the demised property or in other property which shall belong to the Lessor.

VI.—The Lessee shall save the Lessor harmless from all expenses in the prosecution or defense of any action or legal proceeding which shall be based upon any cause of action which may arise or may have arisen from the operation of the railroad or railroads of the Lessor, and will also pay any judgment that may be recovered against the Lessor upon any such cause of action, provided however that any taxes or other liqui-

dated claims accruing prior to the date on which the Lessee shall take possession hereunder or resulting from the business of the Lessor prior to such date, shall be paid from the fund of $23,000,000 hereinafter provided to be paid by the Lessee. All such taxes and liquidated claims shall be apportioned between the periods respectively preceding and following said date.

VII.—The Lessor shall, whenever required by the Lessee during the continuance of this lease, do and perform any and every corporate act which may be necessary, useful or appropriate to secure to the Lessee, or its successors, the full enjoyment of the demised property, including the existing lines of railroad, and any and all connections, extensions, and branches, and the right to construct, maintain and operate any connections, extensions or branches which the Lessee may desire to construct or operate, and of every franchise, right, easement, power and privilege connected therewith or appertaining thereto, including any change of motive power that the Lessee may deem desirable, and of all other rights and powers now possessed, or which may be hereafter possessed, by the Lessor, and it will maintain and extend its corporate organization for the purposes hereof, and will apply for all such connections, extensions and branches and changes of motive power as the Lessee may reasonably demanded, all expenses incurred therefor by the Lessor to be borne by the Lessee ; provided, however, that the expenses of maintaining the corporate organization of the Lessor shall not exceed the sum of $10,000 annually. The Lessee shall likewise maintain and extend its corporate existence for the purposes hereof.

VIII.—The Lesssor shall, from time to time, upon the request of the Lessee, give, make, execute and deliver such further and other evidences and assurances, papers and instruments, as may be necessary or proper

to carry into full force and effect all the objects and purposes of this Indenture, and the Lessor covenants that it is lawfully possessed of the premises hereby demised and has full power to demise and lease the same as aforesaid subject to the mortgages, leases and contracts hereinbefore recited.

IX.—The Lessee shall at all times during this lease have the full and exclusive right to manage, use and control the demised property, and to regulate and determine the rates of toll and charges of transportation over the whole or any part of said demised lines of railroad, and to charge and collect the same and appropriate the same to its own use, and shall have, use and enjoy all the rights, powers and authority of the Lessor in that behalf, and all rights, powers, easements and privileges now possessed or which may hereafter be acquired by the Lessor, necessary or convenient to the construction, maintenance, use, operation, possession and enjoyment of said railroad or railroads, and any and all connections, extensions and branches thereof which can or may be lawfully exercised and enjoyed under its charter and the laws applicable thereto, in, about, or in connection with said demised property, and in the maintenance and operation thereof.

X.—In order to enable the Lessee to beneficially enjoy the property, rights, privileges and benefits herein mentioned and hereby demised, the Lessor appoints the Lessee its attorney irrevocable, with full power and right, at the expense of the Lessee, to use the name of the Lessor in and about the maintenance, operation and use of the demised property, with power to make any and all contracts in proper furtherance of the objects herein set forth, with any person or corporation in the name of the Lessor, and under its corporate seal or otherwise, and in its name and under its corporate seal to make and file certificates, apply for and receive consents, and take all necessary proceedings for the construction, maintenance and

operation of such extensions or branches of said railroad or railroads as said Lessee shall desire, and generally to do all other acts and things in and about the premises which the Lessor might lawfully do, but at the expense of the Lessee, and to use the name and seal of the Lessor in and about any legal proceedings and suits, either at law or in equity, as to the Lessee may seem necessary, requisite or proper in carrying out the objects and intent of this indenture.

XI.—The Lessee shall have all the rights, power and authority over all lines of railroad and other property now operated by the Lessor under lease, which the Lessor has or is entitled to exercise, except in so far as such powers, rights and authority are not transferable, and in all such cases the Lessor shall exercise its rights, powers and authority as shall be directed by the Lessee, provided that in no case shall the Lessor be required to do any act which shall be contrary to law or in violation of any contract. All the income which the Lessor shall receive, or shall be entitled to receive, from any of its leased lines, and from any stocks, bonds and other securities now or hereafter held by it and from any and every other source whatsoever, shall be the property of the Lessee. The Lessor shall not sell or otherwise dispose of any shares of stock of other corporations now or hereafter held or owned by it, except by the written consent of the Lessee, and it shall vote, and issue proxies to vote, all such shares of stock as shall be directed in writing by the Lessee, provided that the Lessor shall not be required to act contrary to law or the provisions of any mortgage or other contract.

For further assuring unto the Lessee the use of the property and rights hereby demised the Lessor hereby assigns and transfers to the Lessee the Lessor's equity in all shares of stock of other railroad companies acquired by it under its lease and agreement with the Third Avenue Railroad Company dated April 13, 1900, that is to say, the ownership of such shares of stock,

subject to the prior lien of the mortgage of the Third Avenue Railroad Company to the Morton Trust Company dated May 15, 1900, to secure an issue of $50,000,000 face value of Four Per Cent. First Consolidated Mortgage Bonds of the Third Avenue Railroad Company and of any prior mortgages which may be a lien thereon. The Lessee covenants that it will not transfer, assign or encumber the shares of stock acquired under said lease of the Third Avenue Railroad Company.

XII.—The Lessee shall furnish to the Lessor the sum of twenty-three million dollars ($23,000,000) for the purpose of paying the unfunded debt of the Lessor, and providing for expenditures for improving, extending and equipping the lines of railroad and other property of the Lessor and its subsidiary companies. Such sum shall be furnished and paid in the following manner and in the following instalments:

(a.) At least five million dollars ($5,000,000) of said sum shall be paid to the Lessor within forty days after the approval of this lease by the stockholders of the Lessor. Such sum and any subsequent sums paid by the Lessee shall be applied to the payment of the unfunded debt of the Lessor until the same has been paid in full.

(b.) Further payments shall be made from time to time in amounts of not less than one million dollars ($1,000,000), upon thirty days' notice in writing by the Lessor to the Lessee, as required for the purposes hereinafter mentioned, and the same as well as any portion of said payment of at least $5,000,000 not required to pay the unfunded debt of the Lessor, shall be used to provide for the improvement, extension and equipment of the lines and other property of the Lessor and its subsidiary companies.

XIII.—All unfunded debt, rentals and taxes (subject to apportionment as hereinbefore provided) and

other liquidated claims (excluding funded debt), existing against the Lessor on the date when the Lessee takes possession hereunder shall be paid from said sum of $23,000,000, except to such extent as funds for any of said purposes shall have been or may be provided from moneys and other assets on hand, and from other sources. All claims of the character hereinbefore described existing on said date against companies a majority of whose stock is owned by the Lessor shall be acquired by means of said fund of $23,000,000, and such claims shall, so far as practicable, be kept alive for the protection of the parties hereto. Only such part of said fund of $23,000,000 as shall remain after the payment of the debts and claims hereinbefore mentioned shall be used for the improvement, extension and equipment of the lines owned, leased or controlled by the Lessor.

XIV. The Lessor shall provide for the payment or extension of its present and future funded debt and that of its subsidiary companies and, subject to the provisions hereof, the Lessor or any subsidiary company shall have the right to extend, refund or consolidate any of its funded obligations; or to issue new securities to retire its funded obligations; but in every such case the Lessee shall have the following privileges, in so far as they may be lawfully conferred by the Lessor:

(a) To purchase any new securities or extended obligations at the same price and upon the same terms as those at which the Lessor is willing to permit the same to be purchased or held by others; or

(b) At the option of the Lessee, before the Lessor, or any subsidiary company shall sell any securities or extend any maturing obligations, it shall give to the Lessee an opportunity of furnishing to the Lessor or to the subsidiary com-

pany, as the case may be, the money intended to be raised by the sale of securities or required to pay the maturing obligations, and to receive therefor obligations of the Lessor, or of the subsidiary company, as the case may be, bearing interest at the rate of four per cent. per annum, and secured by mortgage upon its property and maturing in such period as the Lessee may determine, which shall not be less than ten years nor more than one hundred years thereafter. The Lessor shall not, however, be required hereunder to give to the Lessee any rights with reference to the funded debt of any subsidiary company, except in so far as such rights may at the time exist in favor of the Lessor.

(c) In case the Lessor shall, as it may, create a refunding mortgage to secure an issue of refunding bonds to retire, acquire or refund the existing funded debt of the Lessor and part or all of the funded debt of its subsidiary companies, then the Lessor may from time to time issue such refunding bonds to retire, acquire or refund the funded debt of the Lessor or of any of its subsidiary companies, provided the interest charges of the Lessor or of the subsidiary company, as the case may be, are not thereby increased, but the Lessor shall not sell any such refunding bonds or offer them for sale or exchange, unless by the consent of the Lessee, without first offering them to the Lessee at the same price and upon the same terms as those at which the Lessor is willing to permit the same to be purchased or received by others.

If the Lessor shall fail to comply with any of the foregoing covenants on its part, and the Lessee shall pay the principal of any of the obligations of the Lessor or of any subsidiary company, such obligations shall not be deemed to be paid or extinguished, but shall in the hands of the

Lessee be deemed to be valid outstanding obligations and secured in all respects by the mortgage, if any, securing the same; and the Lessee shall be subrogated to all rights of the original holders of said obligations.

XV.—The Lessor shall not (except to such extent as may be necessary to comply with existing contracts), without the consent of the Lessee, increase, or suffer any increase of, its funded debt and the funded debt of any of the subsidiary companies, nor shall the Lessee, except in the manner herein provided, create or permit the creation of, any funded debt by the Lessor or by any of the subsidiary companies.

The intention of this agreement is that the Lessee shall pay not only the fixed charges of the Lessor and the rental herein provided to be paid, but also all sums of money properly chargeable to current maintenance and operation, but if after the expenditure of such part of said sum of $23,000,000 as shall be available for additional equipment, improvements and extensions, it shall be deemed expedient by the Lessee to extend the lines of railroad hereby demised or the lines of railroad of any subsidiary company, or to construct any branches of any such lines, or to provide any additional and increased equipment for, or to make any change of motive power upon, or any radical change in the construction, location or character of, any such lines, then such expenditures shall be provided for as follows :

(a.) The Lessee shall deliver to the Lessor a written statement of the proposed expenditures stating the approximate amount thereof and the purposes for which they are to be made.

(b.) If the parties hereto shall not within twenty days thereafter agree that such expenditures are advisable and are properly chargeable to capital account, and shall not further agree upon the nature and amount of the securities to be issued by the Lessor to

provide for such expenditures, then the questions upon which the parties shall have failed to agree shall be submitted to arbitration in the manner hereinafter provided.

(c.) When such questions have been agreed upon by the parties or determined by arbitration, then the Lessee shall provide the moneys required for the capital expenditures so agreed upon or determined, and the Lessor shall issue to the Lessee therefor such securities, whether stock, bonds or other obligations, as shall have been fixed by such agreement or arbitration and at the price and upon the terms so fixed.

(d) If the Lessor shall fail, in respect of any questions relating to capital expenditures proposed by the Lessee as hereinbefore provided, either to come to an agreement with the Lessee or to submit the questions in difference to arbitration in the manner herein provided, and such default shall continue for thirty days, or if the arbitrators or a majority of them shall fail to decide any questions submitted to them within sixty days after their appointment, or if the Lessor shall fail to comply with any decision of the arbitrators or to carry out any agreement with respect to the issue of securities for capital expenditures, then the Lessee shall be entitled to make the expenditures specified in said statement or fixed by agreement or by arbitration, as the case may be, and shall have a claim therefor against the Lessor and the Lessee shall be entitled to issue therefor in the name of the Lessor, obligations of the Lessor bearing interest at the rate of four per cent. per annum, payable semi-annually and maturing on such date as the Lessee shall determine, which shall not be less than ten years nor more than one hundred years thereafter. Any such obligations shall be subject to the provisions hereof relative to the funded debt of the Lessor, and the Lessee shall in no event be re-

lieved from its obligation to pay seven per cent. per annum upon the capital stock of the Lessor.

Nothing herein contained shall prevent the Lessee from arranging for the extension, consolidation or refunding of any funded debt of the Lessor or of its subsidiary companies or from advancing money to the Lessor or any subsidiary company, or purchasing stock of the Lessor or of any subsidiary company, for any expenditure chargeable as herein provided to capital account or for any purpose not herein otherwise provided for, upon such terms and upon such security as may from time to time be approved by the Boards of Directors of the parties hereto; provided, however, that the Lessee shall in no event be relieved from paying the guaranteed dividend of seven per cent. upon the amount of the capital stock of the Lessor and the other fixed charges of the Lessor, as herein provided. Nothing herein shall require the Lessor to sell to the Lessee any stock which it may hereafter create without having first recognized any rights to purchase the same which may at the same time exist in favor of the stockholders of the Lessor.

XVI.—In consideration of the premises and of said sum of $23,000,000 agreed to be paid by the Lessee and of the assumption by the Lessee of the obligations of the Lessor as hereinbefore provided, the Lessor hereby sells, assigns, transfers and sets over unto the Lessee, its successors and assigns, its holdings of the shares of the capital stock of the Third Avenue Railroad Company, the Central Park North and East River Railroad Company, the Forty-second and Grand Street Ferry Railroad Company, the Central Crosstown Railroad Company, the Second Avenue Railroad Company, the Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company, and of the Second Mortgage Bonds of the Metropolitan Crosstown Railway Company, and of the Income Bonds of the Forty-Second Street, Manhattanville and St. Nicholas Avenue Railway Company, and such other

shares of stock and bonds of other corporations as it may own which are not pledged under any mortgage or deed of trust; and also all claims which the Lessor has or may have against any of its subsidiary companies for any moneys it has advanced or may advance to, or has expended or may expend in equipping or improving the property of, any of such companies. If the Lessee shall acquire hereunder a majority of the stock of any subsidiary corporation it shall not part with the same unless the railroads of such corporation shall at the time be under lease to the Lessor. The Lessor shall furnish the Lessee upon demand a schedule of the property by this article conveyed. The Lessor covenants that in lieu of the claims for moneys advanced and to be advanced to subsidiary companies, it will, at the option of the Lessee, deliver to the Lessee an equal amount of refunding bonds or other obligations of the Lessor bearing interest at the rate of four per cent. per annum. Nothing herein contained shall prevent the respective boards of directors of the parties hereto from agreeing from time to time upon changes in the amount and character of the securities and claims to be conveyed to the Lessee as herein mentioned, provided the aggregate amount thereof be not increased, and the Lessor may at its option hold a proportionate part of any of said securities and claims as security for the payment by the Lessee of any unpaid portion of said sum of $23,000,000 to be paid by the Lessee, as hereinbefore provided, but as such payments are made, the Lessee may require the delivery of a proportionate part of the securities and claims so withheld.

XVII.—In no event shall the stockholders of the Lessee or of the Lessor be held to any individual liability as stockholders for any default, damages or other breach of obligation, whether of this lease or of any instrument made in pursuance thereof by either party thereto or for any claims or demands of any nature by either of the parties hereto against the other.

XVIII.—Nothing contained in this indenture shall prevent the consolidation or merger with or sale to the Lessee, or, subject to the provisions hereof, to the Lessor, of the railroad and property of any other railroad company or any consolidation or merger of the Lessee or, subject to this indenture, of the Lessor with any other corporation or any conveyance or transfer by the Lessor, subject to this indenture, of its property or any lawful conveyance, mortgage, transfer or lease by the Lessee of its property, including its leasehold interest in the demised premises, provided that no such transfer or lease shall be made without the consent of the Lessor and that the Lessee shall in no event be relieved without the consent of the Lessor from any of its obligations under this agreement; and further provided that, anything herein to the contrary notwithstanding, this lease shall not be assignable or enure to the benefit of the Lessee's successors and assigns, except to such extent as may be lawful under the laws of the State of New York as now or hereafter in force.

XIX.—In the event of differences arising between the Lessor and Lessee, growing out of the operation of the leased property by the Lessee, or otherwise under this indenture the same shall be submitted to the arbitration of three disinterested persons, one of whom shall be chosen by each of the parties hereto, and the third by the two so chosen, and the award and finding of such arbitrators, or of any two thereof, shall be final and conclusive of any question so submitted to them. The arbitrators may award damages for the breach of any covenant, or direct reparation for any such breach, or may direct the performance of any covenant, and if the arbitrators shall make such award, the party so declared in default shall have a reasonable period within which to perform or comply with the award of said arbitrators, or to remedy the grievance complained of before such default or breach shall operate as a forfeiture. In case an arbitration is not otherwise arranged, either party desiring such submission to

arbitration shall notify the other party in writing of the matter which it desires to submit to arbitration. Within ten days thereafter, the party thus notified shall name its arbitrator, and notify the other party of such selection. Thereupon the party demanding such arbitration shall within ten days after the receipt of such notification select and name its arbitrator, and notify the other party thereof, and the arbitrators thus selected shall immediately proceed to select the third arbitrator as aforesaid, and with him to consider and determine all matters submitted.

XX.—Unless some other date be hereafter agreed upon in writing between the parties hereto, the first day of April, 1902, shall, for the purposes of this lease, be deemed to be the date on which the Lessee takes possession hereunder, whatever be the actual date thereof.

XXI.—In case the Lessee shall fail at any time to pay the rent provided for in this indenture of lease, or any part thereof, as the same shall accrue, or shall fail at any time to keep and perform any of the agreements or covenants contained in this indenture of lease, and any such default in the payment of rent or in the performance of the covenants hereof shall continue for the period of twelve months after written demand and notice from the Lessor to the Lessee, then and in any such case, at the option of the Lessor, the estate hereby demised shall cease and determine, and all right, title and interest of the Lessee in the railroads and premises hereby demised and the leases hereby assigned, shall absolutely cease and determine; and the Lessor shall thereupon become and be entitled to re-enter into and upon the railroads and premises hereby demised, and from thenceforth to have, hold, possess and enjoy the same, and every part thereof, as of its first and former estate therein, anything to the contrary herein contained notwithstanding, which right shall not be affected by any waiver of

a prior default by implication or agreement, and no re-entry by the Lessor shall impair the claims of the Lessor for any retails and other payments hereunder which shall be due and unpaid. The right of re-entry for default shall not, however, extend to any of the property hereby transferred absolutely to the Lessee.

In witness whereof, the parties hereto have caused these presents to be executed in duplicate by their proper officers and their corporate seals to be hereunto affixed and attested by their respective secretaries the day and year first above written.

Metropolitan Street Railway Company,
{ corporate seal. } by H. H. Vreeland,
President.

Attest:
Charles E. Warren,
Secretary.

Interurban Street Railway Company,
{ corporate seal. } by T. P. Fowler,
President.

Attest:
Roberts Walker,
Secretary.

State of New York, }
County of New York, } ss.:

On this fourteenth day of February, in the year one thousand nine hundred and two, before me personally came Herbert H. Vreeland and Charles E. Warren, to me known, who, being by me severally duly sworn, did depose and say that he, the said Herbert H. Vreeland, resided in the city of New York, in the State of New York; and that he, the said Charles E. Warren, resided in the city of New York, in the State of New York; and

that he, the said Herbert H. Vreeland, is the President of the Metropolitan Street Railway Company, the corporation described in and which executed the foregoing instrument, and that he, the said Charles E. Warren, is the Secretary thereof; that they knew the seal of the said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that they signed their names thereto as President and Secretary, respectively, by like order.

SHARON GRAHAM,
Notary Public,
New York County.

{ NOTARIAL SEAL }

STATE OF NEW YORK, } ss.:
County of New York, }

On this fourteenth day of February, in the year one thousand nine hundred and two, before me personally came Thomas P. Fowler and Roberts Walker, to me known, who being by me severally duly sworn, did depose and say that he, the said Thomas P. Fowler, resided in the city of New York in the State of New York, and he, the said Roberts Walker resided in the city of New York in the State of New York, and that he, the said Thomas P. Fowler, is the President of the Interurban Street Railway Company, the corporation described in and which executed the foregoing instrument, and that he, the said Roberts Walker, is the Secretary thereof; that they knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that they signed their names thereto as President and Secretary, respectively, by like order.

WILBUR L. BALL,
Notary Public, 11,
New York County.

{ NOTARIAL SEAL }

In the Matter of the Contract of Lease Dated February 14, 1902, Between the Metropolitan Street Railway Company, as Lessor, and the Interurban Street Railway Company, as Lessee.

CERTIFICATE OF SECRETARY OF LESSOR AND LESSEE RESPECTIVELY AS TO APPROVAL OF LEASE BY STOCKHOLDERS.

I, CHARLES E. WARREN, the Secretary of the Metropolitan Street Railway Company, hereby certify that the foregoing contract of lease has been approved by the votes of stockholders of the Metropolitan Street Railway Company, owning at least two-thirds of the capital stock of said company, such stock having been represented and voted upon in person or by proxy at a meeting called separately for the purpose upon a notice stating the time, place and object of the meeting, mailed at least thirty days previously to each stockholder at his post-office address, and also published at least once a week for four successive weeks in a newspaper printed in the County of New York, City of New York, where said corporation has its principal office.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said corporation this 20th day of March, 1902.

CHARLES E. WARREN,
Secretary of the Metropolitan Street Rail-
Company.

[Corporate Seal.]

I, ROBERTS WALKER, the Secretary of the Interurban Street Railway Company, hereby certify that the foregoing contract of lease has been approved by the votes of stockholders of the Interurban Street Railway Company owning at least two-thirds of the capital stock of said company, such stock having been represented and

voted upon in person or by proxy at a meeting called separately for the purpose upon a notice stating the time, place and object of the meeting, mailed at least thirty days previously to each stockholder at his post-office address, and also published at least once a week for four successive weeks in a newspaper printed in the County of Westchester, in which County said corporation has its principal office.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said corporation this 20th day of March, 1902.

ROBERTS WALKER,
Secretary of the Interurban Street Railway Company.

[Corporate Seal.]

STATE OF NEW YORK, }
City and County of New York, } ss.:

On this 20th day of March, 1902, before me personally came Charles E. Warren and Roberts Walker, to me known and known to me to be the persons described in and who executed the above certificates respectively and they severally acknowledged to me that they executed such certificates.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal this 20th day of March, 1992.

SHARON GRAHAM,
Notary Public,
New York County.

[Notarial Seal.]

Filed and recorded in the Office of the Clerk of the County of Westchester, on April 8, 1902, at 2:17 p. m.

Filed and recorded in the Office of the Clerk of the County of New York, on April 8, 1902, at 2:24 p. m.

Filed and recorded in the Office of the Secretary of State of the State of New York on April 8, 1902, at 4:35 p. m.

Schedule B, Referred to in Petition of Metropolitan Street Railway Company.

Exhibit D.

Four Per Cent. Refunding One Hundred Year Gold Mortgage Bonds.

METROPOLITAN STREET RAILWAY COMPANY

TO

MORTON TRUST COMPANY, Trustee.

MORTGAGE AND DEED OF TRUST.

DATED MARCH 21, 1902.

METROPOLITAN STREET RAILWAY COMPANY.

MORTGAGE AND DEED OF TRUST.

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THIS INDENTURE, dated the 21st day of March, in the year nineteen hundred and two, by and between the METROPOLITAN STREET RAILWAY COMPANY, a corporation organized and existing under the laws of the State of New York (hereinafter called the "Railway Company"), party of the first part, and the MORTON TRUST COMPANY, also a corporation organized and existing under the laws of the State of New York, as Trustee (hereinafter called the "Trustee"), party of the second part:

Incorporation of Railway Company.

WHEREAS, the Railway Company, party of the first part, is a street surface railroad company, organized and existing under the laws of the State of New York, and formed by the merger and consolidation, at divers times, of the Houston, West Street and Pavonia Ferry Railroad Company, the Broadway Railway Company, the South Ferry Railroad Company, The Metropolitan Crosstown Railway Company, The Lexington Avenue and Pavonia Ferry Railroad Company and The Columbus and Ninth Avenue Railroad Company, all said Companies having been street surface railroad companies organized and existing under the laws of the State of New York;

Ownership of railroad routes.

AND WHEREAS, the Railway Company is the owner in fee simple of certain street surface railroads, railroad franchises and railroad routes in the County of New York, in the City of New York, State of New York, including the railroads, properties and franchises of the several corporations so merged and consolidated as aforesaid;

Possession of leased railroads.

AND WHEREAS, the Railway Company is in possession of and is operating divers other street surface railroads in said City under leases from the companies owning the same, and is also the owner of certain rights, privileges and franchises to use the railroads, tracks, routes and franchises of street surface railroad

companies, all hereinafter more particularly referred to and described ;

Acquisition of bonds of railroad companies.

AND WHEREAS, the Railway Company desires to provide for the acquisition of the bonds of certain street surface railroad companies, the lines of which are leased to the Railway Company or form a part of or are used in connection with the system of railroads of the Railway Company ;

Ownership of real estate.

AND WHEREAS, the Railway Company is also the owner of certain parcels of real estate in the County of New York, in the City of New York, State of New York, hereinafter particularly described, and is the lessee of other parcels of real estate in said city ;

Underlying mortgages.

AND WHEREAS, certain of the railroads, properties, franchises, and real estate aforesaid, owned by the Railway Company, are subject to the liens of certain mortgages and deeds of trust severally and respectively securing bonds issued thereunder or secured thereby of the Railway Company, The Lexington Avenue and Pavonia Ferry Railroad Company, The Columbus and Ninth Avenue Railroad Company, The Broadway Surface Railroad Company, The Metropolitan Crosstown Railway Company, the South Ferry Railroad Company, Oren Root, Jr.; and John D. Crimmins (hereinafter called "outstanding old bonds"), which said mortgages and deeds of trust and the amount and description of the outstanding old bonds secured thereby are hereinafter in Article Second of this indenture particularly set forth; and certain of the railroads, properties, franchises and real estate aforesaid, leased to the Railway Company, and also certain of the railroads, properties, franchises and real estate aforesaid, forming part of or used in connection with the Railway Company's system, are subject to the liens of certain mortgages and deeds of trust severally and respectively securing bonds issued thereunder of The Broadway and Seventh Avenue Railroad Company, The Second Ave-

nue Railroad Company, in the City of New York, the Central Park, North and East River Railroad Company, the Bleecker Street and Fulton Ferry Railroad Company, the Twenty-third Street Railway Company, the Forty-second Street and Grand Street Ferry Railroad Company, the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, the Thirty-fourth Street Crosstown Railway Company, the Fulton Street Railroad Company, The Central Crosstown Railroad Company of New York and The Christopher and Tenth Street Railroad Company (hereinafter called "collateral bonds"), which said mortgage and deeds of trust and the amount and description of the collateral bonds secured thereby are also in said Article Second particularly set forth; and there are also outstanding certain Five Per Cent. Bonds of The Metropolitan Crosstown Railway Company, unsecured by mortgage (included in the term "outstanding old bonds") and certain Debenture Bonds of The Second Avenue Railroad Company, in the City of New York, and certain Five Per Cent. Debenture Bonds of the Twenty-third Street Railway Company, also unsecured by mortnage (included in the term "collateral bonds"), the amount and description of which are also in said Article Second particularly set forth; and payment of a large number of said outstanding old bonds and collateral bonds has been guaranteed by the Railway Company; and it is expedient to refund, or to provide for refunding said outstanding old bonds, and to provide funds necessary for completing, finishing and operating the railroads of the Railway Company and to provide for the acquisition of the said collateral bonds and for the other lawful purposes of the Railway Company;

Existing guarantees.

Purposes of this mortgage.

AND WHEREAS, the Railway Company is the owner of certain shares of the capital stock of The Broadway and Seventh Avenue Railroad Company, the Forty-second Street and Grand Street Ferry Railroad Company, the Central Park, North and East River Railroad

Ownership of stock of railroad companies

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Company and the Thirty-fourth Street Crosstown Railway Company, hereinafter more particularly described (the railroads of said companies forming a part of the system of railroads of the Railway Company), and said shares of stock are pledged and deposited under the General and Collateral Trust Mortgage of the Railway Company to the Guaranty Trust Company of New York, as Trustee, dated February 1, 1897 ;

Lease to Interurban Company.

AND WHEREAS, the Railway Company heretofore on or about the 14th day of February, 1902, by its certain indenture of lease bearing date on that day did grant, lease and demise unto the Interurban Street Railway Company, a street surface railroad company organized and existing under the laws of the State of New York, all the railroads, railroad routes, properties, franchises and real estate owned by or leased to the Railway Company as aforesaid, for the term of nine hundred and ninety-nine (999) years next ensuing from and after the said 14th day of February, 1902, which said lease has been duly recorded in the office of the Register of Deeds of the County of New York, and to which and the record thereof reference is hereby made ;

Agreement to pay interest upon funded debt by Interurban Company.

AND WHEREAS, the said Interurban Street Railway Company in and by the said indenture of lease did agree to pay all interest upon the funded debt of the Railway Company, including the interest upon the bonds issued and to be issued hereunder ;

Resolution to issue bonds.

AND WHEREAS, the Railway Company, by due action of its board of directors and of its stockholders, has duly resolved, for the purpose of refunding, and providing for refunding, said outstanding old bonds, and to provide funds necessary for the purpose of completing, finishing and operating its railroads, and for acquiring said collateral bonds, and for its other lawful purposes, to issue its bonds to be known as its "Re-

funding One Hundred Year Gold Bonds," limited to the principal amount of $65,000,000 at any one time outstanding, such bonds to be dated as of April 1, 1902, in the case of coupon bonds, and of the time of their issue in the case of registered bonds, and to become and be payable on the first day of April, in the year 2002, at the City of New York, in gold coin of the United States of or equal to the present standard of weight and fineness, and to bear interest at such rate as the board of directors may from time to time determine as to any then unissued bonds, not exceeding four per cent. per annum, from the first day of April, 1902, payable in like gold coin semi-annually on the first day of April and the first day of October in each year;

Consent of Board of Railroad Commissioners and stockholders to mortgage.

AND WHEREAS, this mortgage and deed of trust to secure said bonds was duly consented to by the Board of Railroad Commissioners of the State of New York and by stockholders owning at least two-thirds of the entire capital stock of the Railway Company, such stock having been represented and voted upon in person or by proxy at a special meeting of the stockholders duly called for that purpose in pursuance of the statute in such case made and provided, and the consent of said Board and the consent of said stockholders (evidenced by a sworn certificate of the vote of said meeting), both in due form are to be contemporaneously herewith duly filed and recorded in accordance with law in the office of the Register of the County of New York, in which County the Railway Company has its principal place of business, and wherein its property is situated;

AND WHEREAS, said Refunding One Hundred Year Gold Bonds, coupons and trustee's certificate are substantially of the tenor and purport following, to wit (except that any of said bonds may bear interest at a less rate than four per cent. per annum):

[FORM OF COUPON BOND.]

Form of coupon bond. No. $1,000.

UNITED STATES OF AMERICA,

STATE OF NEW YORK.

METROPOLITAN STREET RAILWAY COMPANY.

REFUNDING ONE HUNDRED YEAR GOLD MORTGAGE BOND, DUE 2002.

The METROPOLITAN STREET RAILWAY COMPANY (hereinafter called the "Railway Company"), for value received, hereby promises to pay to the bearer, or, if registered, to the registered holder of this bond, One Thousand Dollars, gold coin of the United States of America, of or equal to the present standard of weight and fineness, on the first day of April, in the year 2002, at its office or agency in the City of New York, and to pay interest thereon from April 1, 1902, at the rate of four per cent. per annum, payable at said office or agency in like gold coin, semi-annually on the first days of April and October in each year, upon presentation and surrender, as they severally mature, of the interest coupons hereto annexed. Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Railway Company may be required to pay thereon or retain therefrom under any present or future law of the United States of America, or of any state, county, or municipality therein.

This bond is one of a series of coupon bonds and registered bonds of the Railway Company, known as its "Refunding One Hundred Year Gold Bonds," issued and to be issued to an amount not exceeding in

the aggregate the principal sum of sixty-five million dollars ($65,000,000) at any one time outstanding, and all issued and to be issued under and equally secured by a mortgage and deed of trust, dated March 21, 1902, and executed by the Railway Company to the Morton Trust Company, as Trustee, to which mortgage and deed of trust reference is made for a statement of the nature and extent of the security, the rights of holders of bonds under the same, and the terms and conditions upon which the bonds are issued and secured.

This bond shall pass by delivery unless registered in the name of the owner on the books of the Railway Company, such registry being noted on the bond by the Railway Company. After such registry, no tranfer shall be valid unless made on said books by the registered holder in person or by his attorney duly authorized, and similarly noted on the bond; but the same may be discharged from registry by being transferred to bearer, and thereafter transferability by delivery shall be restored; but this bond may again from time to time be registered or transferred to bearer as before. Such registration, however, shall not affect the negotiability of the coupons, which shall continue to be transferable by delivery. The holder of this bond may, at his option, surrender the same for cancellation, with all unmatured coupons thereto attached or appertaining, in exchange for a registered bond without coupons, as provided in said mortgage and deed of trust.

This bond shall not be valid or become obligatory for any purpose until it shall have been authenticated by the certificate of the said Trustee hereon endorsed.

IN WITNESS WHEREOF, the Metropolitan Street Railway Company has caused these presents to be signed by its President or one of its Vice-Presidents, and its corporate seal to be hereunto affixed, and to be attested by its Secretary or an Assistant Secretary, and coupons for said interest with the engraved signature of its

Treasurer to be attached hereto, as of the first day of April, 1902.

METROPOLITAN STREET RAILWAY COMPANY,
by

Vice-President.

Attest:

Assistant Secretary.

Form of coupon.

[FORM OF INTEREST COUPON.]

No. $20.

On the first day of
the Metropolitan Street Railway Company will pay to bearer at its office or agency in the City of New York twenty dollars ($20) United States gold coin, without deduction for taxes, being six months' interest then due on its Refunding One Hundred Year Gold Bond No.

Treasurer.

Form of registered bond.

[FORM OF REGISTERED BOND.]

No. $

UNITED STATES OF AMERICA,

STATE OF NEW YORK.

METROPOLITAN STREET RAILWAY COMPANY.

REGISTERED REFUNDING ONE HUNDRED YEAR GOLD MORTGAGE BOND, DUE 2002.

THE METROPOLITAN STREET RAILWAY COMPANY (hereinafter called the "Railway Company"), for value received, hereby promises to pay to
or asigns, Thousand
Dollars, gold coin of the United States of America, of

or equal to the present standard of weight and fineness, on the first day of April, in the year 2002, at its office or agency in the City of New York, and to pay interest thereon from the first day of April or October, as the case may be, next preceding the date hereof, at the rate of four per cent. per annum, payable at said office or agency in like gold coin, semi-annually on the first days of April and October in each year. Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Railway Company may be required to pay thereon or retain therefrom under any present or future law of the United States of America, or of any state, county or municipality therein.

This bond is one of a series of coupon bonds and registered bonds of the Railway Company, known as its "Refunding One Hundred Year Gold Bonds," issued and to be issued to an amount not exceeding in the aggregate the principal sum of sixty-five million dollars ($65,000,000) at any one time oustanding, and all issued and to be issued under and equally secured by a mortgage and deed of trust, dated March 21, 1902, and executed by the Railway Company to the Morton Trust Company, as Trustee, to which mortgage and deed of trust reference is made for a statement of the nature and extent of the security, the rights of holders of bonds under the same, and the terms and conditions upon which the bonds are issued and secured.

This bond is transferable by the registered holder thereof, in person or by attorney duly authorized, on the books of the Railway Company at its office or agency in the City of New York, upon surrender and cancellation of this bond, and a new registered bond will be issued to the transferee in exchange therefor, as provided in said mortgage and deed of trust, and on payment, if the Railway Company shall so require, of the transfer fee therein provided for.

This bond shall not be valid or become obligatory for any purpose until it shall have been authenticated by the certificate of the said Trustee hereon indorsed.

IN WITNESS WHEREOF, the Metropolitan Street Railway Company has caused these presents to be signed by its President or one of its Vice-Presidents, and its corporate seal to be hereunto affixed, and to be attested by its Secretary or an Assistant Secretary, this day of

METROPOLITAN STREET RAILWAY COMPANY
by

Vice-President.

Attest:

Assistant Secretary.

Form of Trustee's certificate.

[FORM OF TRUSTEE'S CERTIFICATE TO COUPON AND REGISTERED BONDS.]

THIS IS TO CERTIFY that this bond is one of the bonds described in the within mentioned mortgage indenture or deed of trust, dated March 21, 1902.

MORTON TRUST COMPANY,
Trustee,
by

Vice-President.

Authorization of mortgage by board of directors.

AND WHEREAS, the Board of Directors of the Railway Company has approved the form of this indenture and directed that the same be executed and delivered to the Morton Trust Company, as Trustee;

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That in order to secure the payment of the principal and interest of all such bonds at any time issued and outstanding under this indenture, according to their tenor, purport and effect, and to secure the performance and observance of all the covenants and conditions herein contained, and to declare the terms and conditions upon which said bonds are issued, received and held,

and for and in consideration of the premises, and of the purchase or acceptance of such bonds by the holders thereof, and of the sum of one dollar, lawful money of the United States of America, to it duly paid by the Trustee at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, the METROPOLITAN STREET RAILWAY COMPANY, party of the first part, has granted, bargained, sold, released, conveyed, assigned, transferred and set over, and by these presents does grant, bargain, sell, release, convey, assign, transfer and set over unto the MORTON TRUST COMPANY, party of the second part, its successors and assigns forever: ALL AND SINGULAR THE RAILROADS, RAILROAD ROUTES, ESTATES, LEASEHOLDS, PROPERTIES, RIGHTS, PRIVILEGES AND FRANCHISES DESCRIBED AS FOLLOWS, TO WIT:

Granting clause.

Properties mortgaged.

I.

STREET SURFACE RAILROADS IN THE COUNTY OF NEW YORK, CITY OF NEW YORK, AND STATE OF NEW YORK, OWNED BY THE RAILWAY COMPANY, DESCRIBED AS FOLLOWS:

Houston, West Street and Pavonia Ferry, or Avenue C Line.

Commencing at the intersection of Duane Street with West Street, thence through and along Duane Street with a double track to Greenwich Street, thence through and along Greenwich Street with a single track to Charlton Street, thence through and along Charlton Street with a single track to Prince Street, thence through and along Prince Street with a single track to Bowery, thence upon and across the Bowery with a single track to Stanton Street, thence through and along Stanton Street with a single track to Pitt Street, thence through and along Pitt Street with a single track to Avenue C, thence through and along Avenue C, wtth a single track to Third Street, thence through and along Avenue

C, from Third Street with a double track to the northern extremity of the said Avenue C, thence through and along Third Street, connecting with the double track in Avenue C, with a single track to First Avenue, thence through and along First Avenue with a single track to East Houston Street, thence through and along East Houston Street with a single track to the Bowery, thence upon and across the Bowery with a single track to West Houston Street, thence through and along West Houston Street, with a single track to Washington Street, thence through and along Washington Street with a single track to Duane Street; thence through and along Duane Street, connecting with the double track to the place of beginning, being the route described in Chapter 625 of the Laws of 1868 of the State of New York.

Extension on Avenue C through Seventeenth Street, etc.

From Avenue C through Seventeenth and Eighteenth Streets, by single track in each street, to Avenue A, thence through and along Avenue A, by double track to Twenty-third Street; thence through and along Twenty-third Street, by double track to First Avenue; thence through and along First Avenue, by double track, to Thirty-sixth Street; thence through and along Thirty-sixth Street, by single track, to Lexington Avenue; and also through and along Thirty-fifth Street, by single track, from First Avenue to Lexington Avenue; thence through and along Lexington Avenue, by single or double track, to Forty-second Street; thence through and along Forty-second Street by double track to Fourth Avenue. Also, by single track, through and along Charlton Street, from Greenwich Street to West Street; and, by single track, through and along West Houston Street, from Washington Street to West Street; thence through and along West Street by double track, to Chambers Street. Also, through and along Tenth Street, connecting with the double track in Avenue C, by single

track to Avenue D; thence through and along Tenth Street, by double track to the East River. Also connecting with the double track on Tenth Street, through and along Avenue D, by single track, to Eleventh Street; thence through and along Eleventh Street, by single track, to and connecting with the double track on Avenue C, being the route described in Chapter 19 of the Laws of 1871 of the State of New York.

Chambers Street and Grand Street Ferry Line.

Commencing at the foot of Roosevelt Street, East River, thence through, upon and along South Street, with double tracks to James Slip; thence through, upon and along James Slip, with double tracks, to New Chambers Street; thence through, upon and along New Chambers Street to Chatham Street, with double tracks; thence across Chatham Street to Chambers Street, with single track; thence through, upon and along Chambers Street, with single track, to Pavonia Avenue Ferry, foot of Chambers Street, North River; thence returning, with single or double tracks, through, upon and along West Street to Duane Street; thence through, upon and along Duane Street, with single track to and across Chatham Street to connect with the double tracks at New Chambers Street. Also from New Chambers Street, at Madison Street, through, upon and along Madison Street, with double tracks to Grand Street; thence through, upon and along Grand Street, with single or double tracks to the ferry at the foot of Grand Street. Also, from Madison Street, at Jackson Street, through, upon and along Jackson Street, with double or single tracks to Cherry Street; thence through, upon and along Cherry Street, with double or single tracks to the East River; thence through, upon and along East Street, with double or single tracks, to connect with the tracks at the foot of Grand Street, East River, being the route described in the resolution of the Common Council of the City of New York, adopted on December 30, 1884.

Broadway Surface Line.

Commencing at the southerly end of Broadway near the Battery and running thence with double tracks through and along Broadway, and across Fourteenth Street to and along Union Square to a point at or near the intersection of Fifteenth Street and West Union Square, being the route described in the resolution of the Common Council of the City of New York, adopted December 5, 1884.

South Ferry Line.

Commencing at the northerly side of Vesey Street; thence through, upon and along Church Street, with double track to Morris Street; thence through, upon and along Morris Street, with a double track to Greenwich Street; thence through, upon and along Greenwich Street, with a double track to Battery Place; thence through, upon and along Battery Place, with a double track to State Street; thence through, upon and along State Street with a single track, to Whitehall Street; thence through, upon and along Whitehall Street, with a single track to the South Ferry; returning through, upon and along Whitehall Street to Bowling Green; thence through, upon and along the southerly side of Bowling Green to connect with double tracks at Battery Place, being the route described in Chapter 508 of the Laws of 1874 of the State of New York.

Metropolitan Cross-Town Line.

Commencing upon East Street, at or near the Grand Street Ferry, and running thence through, upon and along East Street, with a double track to Delancey Slip or Street; thence through, upon and along Delancey Street, with a double track, to the Bowery; thence through, upon and across the Bowery to Spring Street; thence through, upon and along Spring Street,

with a double track, to South Fifth Avenue; thence through, upon and along South Fifth Avenue, with a double track, to Fourth Street; thence through, upon and along Fourth Street, with a double track, to Macdougal Street; thence through, upon and along Macdougal Street, with a double track, to Waverly Place; thence through, upon and along Waverly Place, to Christopher Street, with a double track; thence through and along Waverly Place, from Christopher Street to Bank Street with a single track; thence through, upon and along Bank Street, with a double track, to Greenwich Avenue; thence through, upon and along Greenwich Avenue, with a double track, to Thirteenth Street and Horatio Street; thence through, upon and along Thirteenth Street and Horatio Street, with a single track, to Eighth Avenue; thence through, upon and across Eighth Avenue to Thirteenth Street; thence through, upon and along Thirteenth Street, with a double track to Thirteenth Avenue; thence through, upon and along Thirteenth Avenue, with a double track, to Fourteenth Street, being the route described in the resolution of the Common Council of the City of New York, adopted December 24, 1889.

Lexington Avenue and Pavonia Ferry Line.

Commencing at Forty-second Street, in the City of New York, at a point of connection with the tracks of the Houston, West Street and Pavonia Ferry Railroad Company, at the junction of said street with Lexington Avenue; thence on and over said Lexington Avenue, with double tracks, to Harlem River, with further constructions and extensions from the junction of One hundred and sixteenth Street and Lexington Avenue, through One hundred and sixteenth Street to Morningside Park and to the East River, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Columbus Avenue and Ninth Avenue Line.

Commencing in Columbus Avenue, in the City of New York, at or near Sixty fourth Street, there to connect with the existing double track of the Ninth Avenue Railroad Company in said avenue; thence running across the surface of the Boulevard and upon, along and over the surface of Columbus Avenue (formerly Ninth Avenue), with double tracks to One hundred and tenth street; also from Columbus Avenue, with double tracks through and along One hundred and sixth street to Amsterdam Avenue, to connect with the existing double track in Amsterdam Avenue (formerly Tenth Avenue), now owned by the Ninth Avenue Railroad Company, being the route described in the resolution of the Common Council of the City of New York, adopted October 10, 1892.

Fort Lee Ferry Extension.

Commencing at the intersection of One hundred and twenty-fifth Street and Amsterdam Avenue (formerly Tenth Avenue), running thence westerly, through One hundred and twenty-fifth Street to the Boulevard, thence northerly through the Boulevard to One hundred and thirtieth Street and thence westerly, through One hundred and thirtieth Street westerly to Twelfth Avenue, to a point on the west side of said avenue at or near Manhattan Street and at or near Fort Lee Ferry, being the route described in the resolution of the Common Council of the City of New York, adopted December 19, 1893.

Columbus and Ninth Avenue Railroad Connection and Extension on One hundred and ninth Street.

Commencing at the intersection of Columbus Avenue and One hundred and ninth Street, and connecting there by suitable curves, switches and appliances with

the road of the Columbus and Ninth Avenue Railroad Company, running thence easterly with double tracks, through, upon and along One hundred and ninth Street to Manhattan Avenue; thence northerly, upon Manhattan Avenue, with double tracks, to the southerly side of Cathedral Parkway (formerly One hundred and tenth Street), there to unite with an extension or branch of the Metropolitan Street Railway Company, being the route described in the resolution of the Common Council of the City of New York, adopted September 18, 1894.

Metropolitan Street Railway Connection and Extension on Manhattan Street.

Commencing at the intersection of Manhattan Avenue and One hundred and sixteenth Street, and connecting there by suitable curves, switches and appliances with the road of the Railway Company, running thence southerly, with double tracks, through, upon and along Manhattan Avenue to the southerly side of Cathedral Parkway (formerly One hundred and tenth Street), there to unite with an extension or branch of the Columbus and Ninth Avenue Railroad Company, being the route described in the resolution of the Common Council of the City of New York, adopted September 18, 1894.

Houston, West Street and Pavonia Ferry Connection and Extension on Ridge Street and Montgomery Street.

Commencing at the intersection of Houston Street and Avenue C in the City of New York, connecting there by suitable curves and appliances with the route of the Houston, West Street and Pavonia Ferry Railroad Company, running thence through, upon and along Houston Street over the single track in said street of the road of the Forty-second Street and Grand Street Ferry Railroad Company to Ridge Street; thence (with suitable curves and appliances

at or near Ridge Street) through, upon and along Ridge Street with a single track to the said point of union, and by the construction, maintenance and operation of an extension or branch of the said railroad formerly of the Chambers Street and Grand Street Ferry Railroad Company, commencing at the intersection of Montgomery Street and Madison Street, connecting there by suitable curves and appliances with the said road formerly of the Chambers Street and Grand Street Ferry Railroad Company, running thence with a single track through, upon and along Montgomery Street to Division Street; thence through upon and across Division street to Ridge Street; thence through, upon and along Ridge Street with a single track to the said point of union, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Houston, West Street and Pavonia Ferry Railroad Connection and Extension on Pitt Street and Gouverneur Street.

Commencing at the intersection of Third Street and Avenue C, connecting there by suitable curves and appliances with the tracks of the Houston, West Street and Pavonia Ferry Railroad Company, and running thence with an additional single track through, upon and along Avenue C to and across Houston Street to Pitt Street, there to connect by suitable curves and appliances with the existing single track of the Houston, West Street and Pavonia Ferry Railroad Company in Pitt Street, and running thence through, upon and along Pitt Street over the said single track in said street to Stanton Street; thence (with suitable connections and curves at Stanton Street) upon and across Stanton Street with a single track; thence through, upon and along Pitt Street to said point of union; and by the construction, maintenance and operation of an extension or branch of the railroad formerly of the Chambers Street and Grand

Street Ferry Railroad Company, commencing at the intersection of Gouverneur Street and Madison Street, connecting there by suitable curves and appliances with the said road formerly of the Chambers Street and Grand Street Ferry Railroad Company, running thence, with a single track, through, upon and along Gouverneur Street to and across Grand Street: thence with a single track through, upon and along Pitt Street to said point of union, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Metropolitan Cross-Town Connection and Extension on West Third Street.

Commencing at the intersection of South Fifth Avenue and West Third Street, connecting there by suitable curves and attachments with the road of The Metropolitan Cross-Town Railway Company, and running thence westerly with double tracks through, upon and along West Third Street to a point of union with an extension or branch of the railroad of the Sixth Avenue Railroad Company, at or near Sullivan Street, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Metropolitan Cross-Town Connection and Extension on Broome, Sullivan and Watts Streets.

From a connection with the route of The Metropolitan Cross-Town Company on South Fifth Avenue, at the intersection of Broome Street, by suitable curves and appliances; thence with double tracks through, upon and along Broome Street to Sullivan Street; thence through, upon and along Sullivan Street with double tracks to Watts Street; thence through, upon and along Watts Street with double tracks to a union with the route and road of the Houston, West Street and Pavonia Ferry Railroad Company, now on

West Street, and to connect also with Desbrosses Street Ferry, said branch over said streets to said union of the routes or road of The Metropolitan Cross-Town Railway Company when built on South Fifth Avenue to Broome Street, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Metropolitan Cross-Town Connection and Extension on South Fifth Avenue.

Commencing at South Fifth Avenue and Spring Street, connecting there by suitable curves and appliances with the existing road of The Metropolitan Cross-Town Railway Company, and running thence southerly with double tracks through, upon and along South Fifth Avenue to Broome Street, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Houston, West Street and Pavonia Ferry Connection and Extension on Lexington Avenue.

Along and over Lexington Avenue from Twenty-seventh Street to Thirty-fifth Street by double track, and by single track from Thirty-fifth Street to Thirty-sixth Street, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Metropolitan Street Railway Connection and Extension on West Broadway.

Commencing at the intersection of West Broadway and Duane Street, and connecting there by suitable curves, switches and appliances with the Metropolitan Street Railway Company's existing tracks in said Duane Street, running thence southerly in or upon West Broadway, with double tracks to Chambers

Street, and thence southerly with double tracks, in or upon West Broadway (a portion of which was formerly College Place), to Vesey Street, there to connect with a double track extension or branch of the railroad and route of the Central Park, North and East River Railroad Company, being the route described in the resolution of the Common Council of the City of New York, adopted April 14, 1896.

II.

REAL ESTATE OWNED BY THE RAILWAY COMPANY, BEING THE FOLLOWING DESCRIBED PIECES AND PARCELS OF LAND WITH THE BUILDINGS AND IMPROVEMENTS THEREON SITUATE, LYING AND BEING IN THE COUNTY OF NEW YORK, CITY OF NEW YORK AND STATE OF NEW YORK.

A. REAL ESTATE NOT SUBJECT TO THE RAILWAY COMPANY'S GENERAL AND COLLATERAL TRUST MORTGAGE.

Lexington Avenue and Thirty-third Street Property.

All that certain plot, piece or parcel of land with the buildings thereon erected, situate, lying and being in the City and County of New York, bounded and described as follows: Beginning at a point formed by the intersection of the easterly line of Park (formerly Fourth) Avenue, with the northerly line or side of Thirty-second Street; running thence northerly along the easterly side of Park Avenue, one hundred ninety-seven (197) feet six (6) inches to the southeasterly corner of Park Avenue and Thirty-third Street; thence easterly along the southerly side of Thirty-third Street, four hundred and twenty-five (425) feet to the southwesterly corner of Thirty-third Street and Lexington Avenue; thence southerly along the westerly side of Lexington Avenue, one hundred forty-

eight (148) feet one (1) inch; thence westerly parallel or nearly so with Thirty-third Street, forty eight (48) feet four (4) inches; thence southerly and nearly parallel with Lexington Avenue, forty-nine (49) feet five (5) inches to the northerly side of Thirty-second Street, at a point distant forty-eight (48) feet four (4) inches westerly from the westerly side of Lexington Avenue; thence westerly along the northerly side of Thirty-second Street, three hundred seventy-six (376) feet eight (8) inches to the point or place of beginning; being the same premises heretofore conveyed to The New York and Harlem Railroad Company by the following instruments, to wit: Deed from Mary Murray, dated January 8, 1849, and recorded in the Office of the Register of the County of New York in Liber 518 of Conveyances, page 420; deed from Nathan Jackson and wife, dated February 22, 1849, and recorded in said Register's Office in Liber 558 of Conveyances, page 215; deed from John Alstyne, dated December 13, 1851, and recorded in said Register's Office in Liber 590 of Conveyances, page 226; deed from Henry Abell and wife, dated September 1, 1865, and recorded in said Register's Office, in Liber 947 of Conveyances, page 251; deed from Jesse A. Marshall and wife, John F. Marshall and William H. Wilkins and wife, dated June 1, 1875, and recorded in said Register's Office in Liber 1333 of Conveyances, page 51; deed from Peter S. Bogart and wife, dated December 10, 1849, and recorded in said Register's Office in Liber 537 of Conveyances, page 447, and which premises were conveyed by The New York and Harlem Railroad Company to Oren Root, Junior, by deed bearing date September 6, 1899, and recorded in the office of the Register of the County of New York on September 11, 1899, in Block Series (Conveyances), Section 3, Liber 65, page 136, and indexed under Block Number 888, and Section 5, Liber 63, page 307, and indexed under Block Number 1497, and were conveyed by Oren Root, Jr., to the Railway Company by indenture dated September 22, 1899, subject to a mort-

gage made by the said Root to the Mutual Life Insurance Company, dated September 20, 1899, to secure the payment of the sum of $950,000 and interest.

85th and 86th Streets and Madison Avenue Property.

Also, all those certain lots, pieces or parcels of land, with the buildings and improvements thereon, situate, lying and being in the City and County of New York, bounded and described as follows: Beginning at a point formed by the intersection of the northerly side of Eighty-fifth Street and the westerly side of Madison Avenue, and running thence westerly along the northerly side of said Eighty-fifth Street, two hundred twenty (220) feet; thence northerly parallel with Madison Avenue two hundred four (204) feet four (4) inches, to the southerly side of Eighty-sixth Street; thence easterly along the southerly side of Eighty-sixth street, two hundred twenty (220) feet to the southwesterly corner of Eighty-sixth Street and Madison Avenue; and thence southerly along the westerly side of Madison Avenue two hundred four (204) feet four (4) inches to the point or place of beginning; being the same premises heretofore conveyed to The New York and Harlem Railroad Company by the following instruments, to wit: Deed from Webster Wagner and wife, dated November 5, 1881, and recorded in the office of the Register of the County of New York, in Liber 1923 of Conveyances, page 203; deed from George B. Heath, dated December 3, 1886, and recorded in said Register's Office, in Liber 1998 of Conveyances, page 468; deed from Clark R. Gavit, dated December 22, 1885, and recorded in said Register's Office in Liber 2273 of Conveyances, page 333; deed from Webster Wagner and wife, dated November 12, 1881, and recorded in said Register's office, in Liber 1912 of Conveyances, page 342; deed from Warren S. Crane, dated November 21, 1889, and recorded in said Register's Office, in Liber 2273 of Conveyances, page 331, and deed from James M. Gotendorf and

others, dated August 12, 1885, and recorded in said Register's Office, in Liber 1912 of Conveyances, page 347 ; and which premises were conveyed by The New York and Harlem Railroad Company to Oren Root, Junior, by deed bearing date September 6, 1899, and Recorded in the office of the Register of the County of New York on September 11, 1899, in Block Series (Conveyances), Section 6, Liber 65, page 136, and indexed under Block Number 888, and Section 5, Liber 63, page 307, and indexed under Block Number 1497, and were conveyed by Oren Root, Jr., to the Railway Company by indenture dated September 22, 1899, subject to a mortgage made by the said Root to the Mutual Life Insurance Company dated September 20, 1899, to secure the payment of the sum of $950,000 and interest.

146th Street, 147th Street, Lenox Avenue and 7th Avenue Property.

All that certain lot, piece or parcel of land situate, lying and being in the Twelfth Ward in the City of New York, bounded and described as follows: Beginning at a point on the westerly side of Lenox Avenue (formerly Sixth Avenue) at a point distant one hundred (100) feet north of the corner formed by the intersection of the northerly side of One hundred and forty-sixth Street with the westerly side of Lenox Avenue, running thence northerly along the westerly side of Lenox Avenue to the corner formed by the intersection of the westerly side of Lenox Avenue and the southerly side of One hundred and forty-seventh Street, running thence westerly along the southerly side of One hundred and forty-seventh Street, to the corner formed by the intersection of the southerly side of One hundred and forty-seventh Street with the easterly side of Seventh Avenue, running thence southerly along the easterly side of said Seventh Avenue to the corner formed by the intersection of the easterly side of Seventh Avenue with the northerly side of One hundred and

forty-sixth Street, running thence easterly along the northerly side of One hundred and forty-sixth Street to a point distant four hundred forty (440) feet westerly from the corner formed by the intersection of the northerly side of One hundred and forty-sixth Street with the westerly side of Lenox Avenue (formerly Sixth Avenue), thence running northerly and parallel with the westerly side of Lenox Avenue aforesaid one hundred (100) feet, thence running eastwardly and parallel with the northerly side of One hundred and forty-sixth Street four hundred forty (440) feet to the point or place of beginning; conveyed by indenture dated September 30, 1897, from The Metropolitan Traction Company of New York to the Railway Company and which indenture was recorded in the Office of the Register of the City and County of New York, on October 4, 1897, in Block Series (Conveyances), Section 7, Liber 48, page 99, and indexed under Block Number 2015 on the Land Map of the City of New York, and being part of the land which was conveyed to the Metropolitan Traction Company of New York by Charles D. Lane and Rosa G., his wife, by deed dated July 1, 1894, and recorded in the office of the Register of the City and County of New York on July 17, 1894, in Block Series (Conveyances) Section 7, Liber 22, page 384, and indexed under Block Number 2015 on the lamp map of the City of New York, and being subject to a mortgage of $150,000, with 5 per cent. per annum given by John D. Crimmins to the Mutual Life Insurance Company, dated February 20, 1893, and recorded in the Office of the Register of the City and County of New York on February 20, 1893, in Block Series (Mortgages), Section 7, Liber 23, page 301, and being also subject to the restrictions and covenants contained in a certain grant of the Mayor, Aldermen and Commonalty of the City of New York to Mary G. Pinckney, dated November 7, 1867, and recorded in the Register's Office of the City and County of New York, on November 15, 1867, in Liber 1041 of Conveyances,

page 1, in so far as the same affects the said described premises.

Also, that certain lot, piece or parcel of ground, with the buildings thereon erected, situate, lying and being in the Twelfth Ward of the City of New York, and bounded and described as follows: Commencing at the intersection of the northerly side of One hundred and forty-sixth Street with the westerly side of Lenox Avenue (formerly Sixth Avenue), running thence northerly along the westerly side of Lenox Avenue one hundred (100) feet or thereabouts; running thence westerly and parallel with the northerly side of One hundred and forty-sixth Street four hundred forty (440) feet or thereabouts; running thence southerly and parallel with the westerly side of Lenox Avenue one hundred (100) feet to the northerly side of One hundred and forty-sixth Street; and thence east easterly along the northerly side of One hundred and forty-sixth Street four hundred forty (440) feet or thereabouts to the point or place of beginning; being a portion of the premises heretofore conveyed to the Metropolitan Traction Company of New York by Charles D. Lane and Rosa G., his wife, by deed dated July 1, 1894, and recorded in the Office of the Register of the City and County of New York in Block Series (Conveyances), Section 7, Liber 22, page 384, and indexed under Block Number 2015, and which premises were conveyed to the Railway Company by The Metropolitan Traction Company of New York by deed dated July 2, 1897, and recorded in said Register's Office on July 20, 1897, in Block Series (Conveyances), Section 7, Liber 47, page 241, and indexed under Block Number 2015; subject, however, to a mortgage made by Charles D. Lane and Rosa G., his wife, to John D. Crimmins, and recorded in Block Series (Mortgages), Section 7, Liber 38, page 298, and also subject to the restrictions and covenants contained in a certain grant from the Mayor, Aldermen and Commonalty of the City of New York to Mary G. Pinckney, dated November 7, 1867, and recorded on November 15, 1867, in the Office of the

Register of the City and County of New York in Liber 1041 of Conveyances, page 1, in so far as the same affects the said described premises; provided, however, that the property described under the heading "146th, 147th Street Lenox Avenue and 7th Avenue property" is subject to the right, title and interest therein of the Sixth Avenue Railroad Company.

Dry Dock Street Property.

All that certain lot, piece or parcel of land, with the building thereon erected, situate, lying and being in the Eleventh Ward in the City of New York, bounded and described as follows: Beginning at a point on the westerly side of Dry Dock Street at the middle of the party wall distant southerly from the point or angle formed by the intersection of the westerly line of Dry Dock Street and the southerly line of Eleventh Street, ninety-four (94) feet nine and one-half (9½) inches or thereabouts running thence westerly parallel or nearly so with Eleventh Street and part of the way through a party wall eighty-four (84) feet, thence northerly and parallel or nearly so with Dry Dock Street twenty-two (22) feet, thence easterly parallel or nearly so with Eleventh Street eighty-four (84) feet to the westerly line of Dry Dock Street, thence southerly along the westerly line of Dry Dock Street twenty-two (22) feet to the point or place of beginning; be the said dimensions more or less. Being the same premises conveyed to The Metropolitan Traction Company of New York by Joseph Branagan, by deed dated November 23, 1892, and recorded in the office of the Register of the City and County of New York, on November 23, 1892, in Block Series (Conveyances) Section 2, Liber 14, page 444, and indexed under Block Number 530, and which were conveyed by The Metropolitan Traction Company of New York to the Railway Company by indenture dated September 15, 1897, and recorded in the office of the Register of the City and County of

New York on September 28, 1897, in Block Series (Conveyances) Section 2, Liber 56, page 229, and indexed under Block Number 380.

Front Street Property.

All those three certain lots, pieces or parcels of land, with the buildings and improvements erected thereon, situate, lying and being in the City of New York, and known as Numbers 13, 15 and 17 Front Street, which, taken together, according to a survey thereof made August, 1883, are bounded and described as follows: Beginning at the northeasterly corner thereof at a point in the southerly line or side of Front Street opposite the middle of a party wall and distant thirty-two (32) feet seven (7) inches westerly from the southwesterly corner of Front and Broad Streets, and running thence southwardly parallel or nearly so with Broad Street and along the middle of said party wall, one hundred five (105) feet one (1) inch to a point opposite a fence; thence westwardly along said fence and parallel or nearly so with Front Street eighteen (18) feet nine (9) inches to an angle in said fence; thence in a northwesterly direction and along said fence to another angle therein five (5) feet; thence again westwardly parallel or nearly so with Front Street and along said fence, the brick wall of a five-story building and another fence thirty-seven (37) feet four and one-half (4½) inches to the wall of a five-story brick building; thence northwardly and along said wall to an angle therein twenty (20) feet; thence again westwardly along said wall three (3) feet six (6) inches to the middle of a party wall; thence northwardly along the middle of said party wall and parallel or nearly so with Moore Street seventy-nine (79) feet ten (10) inches to the southerly side of Front Street, and thence eastwardly along said southerly side of Front Street, sixty-five (65) feet one-half (½) inch to the point or place of beginning; that portion which is known as Number 13 Front Street being subject to an agreement

made by Mulford Martin with Elias H. Herrick, dated May 28, 1840. Being the same property which was conveyed to The Metropolitan Traction Company of New York by John D. Crimmins by deed dated September 29, 1892, and recorded in the Office of the Register of the City and County of New York on November 29, 1892, in Block Series (Conveyances) Section 1, Liber 30, page 472, and indexed under Block Number 4, and which was conveyed to the Railway Company by deed dated September 11, 1896, and recorded in the said Register's Office on September 28, 1897, in Block Series (Conveyances) Section 1, Liber 43, page 361, and indexed under Block Number 4.

Ninth Avenue Property.

All those forty certain lots and parts of lots or gores of land, situate, lying and being in the City of of New York, in the Twenty-second Ward of said city, which, taken together as one parcel, are bounded and described as follows, *viz.* : Beginning at a point on the easterly side or line of Ninth Avenue which is distant sixty-five (65) feet northerly from the northerly line of Fifty-third Street ; running thence northerly along said easterly line of Ninth Avenue one hundred thirty-five (135) feet ten (10) inches, to the southerly line of Fifty-fourth Street ; thence easterly along said southerly line of Fifty-fourth Street, five hundred twenty-five (525) feet and to a point distant two hundred seventy-five (275) feet westerly from the point of intersection of the southerly line of Fifty-fourth Street with the westerly line of Eighth Avenue ; thence southerly on a line at right angles with the said southerly line of Fifty-fourth Street one hundred sixty-five (165) feet eleven and three-eighths (11⅜) inches ; thence in a northwesterly direction eighty-one (81) feet two (2) inches, to a point distant thirty-eight (38) feet two (2) inches north of Fifty-third Street ; thence westerly eighty-two (82) feet to a point forty-nine (49) feet north of Fifty-third Street ; thence westerly one hun-

dred twenty-nine (129) feet one (1) inch to a point distant fifty-two (52) feet north of Fifty-third Street; thence westerly one hundred forty-one (141) feet to a point distant fifty-one (51) feet eight (8) inches north of Fifty-third Street; thence westerly sixty-one (61) feet five (5) inches, to a point distant fifty-six (56) feet five (5) inches north of Fifty-third Street; thence westerly thirty-one (31) feet four (4) inches to the easterly line of Ninth Avenue at the point or place of beginning; together with all the buildings and erections now existing thereon; being part of the premises conveyed to John D. Crimmins by the Eighth Avenue Railroad Company, a corporation created and existing under the laws of the State of New York, by deed dated July 19, 1892, and recorded in the Office of the Register of the City and County of New York on August 3, 1892, in Block Series (Conveyances), Section 4, Liber 17, page 78; and by said John D. Crimmins conveyed to The Metropolitan Traction Company of New York by deed dated September 29, 1892, and recorded in said Register's Office on September 29, 1892, in Block Series (Conveyances), Section 4, Liber 18, page 138, and indexed under Block Numbers 1044 and 1045; and by said Metropolitan Traction Company to the Railway Company by deed dated September 11, 1896, and recorded in the office of the Register of the City and County of New York, on September 28, 1897, in Block Series (Conveyances), Section 4, Liber 62, page 11, and indexed under Block Numbers 1044 and 1045 on the Land Map of the City of New York; subject to a certain mortgage dated July 19, 1892, made by John D. Crimmins to The Eighth Avenue Railroad Company, to secure the payment of the sum of Two hundred and fifty thousand dollars ($250,000) and interest, on which $50,000 has been paid.

Fifty-third Street Property.

All that certain gore, lot, piece or parcel of land with the building thereon situate, lying and being on

the northerly side of Fifty-third Street in the City of New York, in the Twenty-second Ward of said city, and bounded and described as follows: Beginning at a point on the northerly side of Fifty-third Street at a point distant four hundred thirty-four (434) feet eleven (11) inches easterly from the corner formed by the intersection of the easterly side of Ninth Avenue with the northerly side of Fifty-third Street; running thence northerly and parallel with Ninth Avenue thirty-nine (39) feet three and one-half (3½) inches or thereabouts to the southerly line of lands formerly of Jacob Harsen; thence easterly along the said line of lands formerly of Jacob Harsen twenty-five (25) feet or thereabouts, thence southerly and again parallel with Ninth Avenue thirty-seven (37) feet five and one-eighth (5⅛) inches or thereabouts to the northerly side of Fifty-third Street, and thence westerly along said northerly side of Fifty-third Street twenty-five (25) feet to the point or place of beginning. Being the same premises conveyed to John D. Crimmins by Margaret F. Miller by deed dated August 3, 1892, and recorded in the Office of the Register of the City and County of New York on August 3, 1892, in Block Series (Conveyances) Section 4, Liber 17, page 87, and by the said John D. Crimmins conveyed to The Metropolitan Traction Company of New York by deed dated September 29, 1892, and recorded in the Office of the Register of the City and County of New York on September 29, 1892, in Block Series (Conveyances) Section 4, Liber 18, page 135 and indexed under Block Number 1044, and by said The Metropolitan Traction Company of New York, conveyed to the Railway Company by deed dated September 15, 1897, and recorded in said Register's office on September 28, 1897, in Block Series (Conveyances) Section 4, Liber 62, page 9, and indexed under block number 1044.

Also all those certain gore lots, pieces or parcels of land, with the improvements thereon, situate, lying and being in the Twenty-second Ward of the City of New York and bounded and described as follows: Begin-

ning at a point on the northerly side of Fifty-third Street distant two hundred and seventy-five (275) feet westerly from the corner formed by the intersection of the westerly side of Eighth Avenue with the northerly side of Fifty-third Street and running thence westerly along said northerly side of Fifty-third Street sixty-five (65) feet one (1) inch to the easterly line of a gore lot conveyed to the Railway Company by The Metropolitan Traction Company of New York by deed dated September 15, 1897; thence northerly along said easterly line of said gore lot thirty-seven (37) feet five and one-eighth (5⅛) inches or thereabouts to the southerly line of lands formerly of Jacob Harsen, deceased; thence easterly along said line of land of Jacob Harsen, deceased, sixty-five (65) feet one (1) inch or thereabouts to a point distant two hundred seventy-five (275) feet westerly from Eighth Avenue; and thence southerly on a line parallel with Eighth avenue thirty-four (34) feet ten and five-eighths (10⅝) inches to the northerly side of Fifty-third Street to the point or place of beginning. Also, all those certain gore lots, pieces or parcels of land, with improvements thereon, situate, lying and being in the Twenty-second Ward of the City of New York and bounded and described as follows: Beginning at a point on the northerly side of Fifty-third Street distant four hundred nine (409) feet eleven (11) inches from the corner formed by the intersection of the easterly side of Ninth Avenue with the northerly side of Fifty-third Street; running thence northerly forty-two (42) feet two (2) inches or thereabouts to the southerly line of lands formerly of Jacob Harsen, deceased; thence easterly along said line of lands of Jacob Harsen, deceased, twenty-five (25) feet to the westerly line of a gore lot conveyed to the Railway Company by The Metropolitan Traction Company of New York by deed dated September 15, 1897; thence southerly along said westerly line of said gore lot and parallel with Ninth Avenue thirty-nine (39) feet three and one-half (3½) inches or thereabouts to the northerly side of Fifty-third Street at a point distant

three hundred sixty-five (365) feet one (1) inch westerly from the corner formed by the intersection of the westerly side of Eighth Avenue with the northerly side of Fifty-third Street, and thence westerly along said northerly side of Fifty-third Street twenty-five (25) feet to the point or place of beginning; being the premises conveyed to the Railway Company by The Metropolitan Traction Company of New York by deed dated September 15, 1897, and recorded in the office of the Register of the City and County of New York on September 28, 1897, in Block Series (Convayonces) Section 4, Liber 62, page 6, and indexed under Block Number 1044.

Twenty-third Street Leasehold.

All those certain lots, pieces and parcels of land in the Sixteenth Ward of the City of New York which, taken together, are bounded and described as follows: Beginning at the intersection of the northerly side of West Twenty-third Street with the westerly side of Eleventh Avenue; thence running northerly and parallel with Eleventh Avenue ninety-eight (98) feet nine (9) inches or thereabouts to the half distance line between Twenty-third Street and Twenty-fourth Street; thence westerly and along said half distance line four hundred fifty-two (452) feet seven and one-half (7½) inches or thereabouts to the easterly line of Thirteenth Avenue; thence southeasterly and parallel with Thirteenth Avenue one hundred one (101) feet four (4) inches or thereabouts to a point formed by the intersection of the easterly line of Thirteenth Avenue with the northerly line of Twenty-third Street; thence easterly and parallel with Twenty-third Street four hundred thirty (430) feet or thereabouts to the point or place of beginning.

B. Real Estate subject to the Railway Company's General and Collateral Trust Mortgage.

Ninety-sixth Street and First Avenue property.

All that certain block, piece or parcel of land with the buildings and improvements thereon, situate, lying and being in the Twelfth Ward of the City of New York and bounded and described as follows, viz.: Northerly by the middle line of Ninety-sixth Street; southerly by the middle line of Ninety-fifth Street; westerly by the middle line of First Avenue, and easterly, by the East or Harlem River. And also the land under water, and all preemptive rights in, upon and under the East or Harlem River, lying in front of the above described block; being the premises conveyed by Daniel B. Hasbrouck and Sarah Hasbrouck, his wife, to the Railway Company, by deed dated April 7, 1897, and recorded in the Office of the Register of the City and County of New York, in Block Series (Conveyances), Section 5, Liber 49, page 25 and indexed under Block Number 1575.

Avenue C Depot Property.

All those two certain lots, pieces or parcels of lands, with the buildings and improvements thereon, situate in the Eleventh Ward of the City of New York, and which taken together are bounded and described as follows: Beginning at the northerly line or side of Eleventh Street, distant one hundred eighty-three (183) feet easterly from the corner formed by the intersection of the northerly side of Eleventh Street with the easterly side of Avenue C, as the same is now laid out and widened, which said widening was not noted or allowed for on the map hereinafter mentioned, and running thence northerly and parallel with Avenue C one hundred three (103) feet three (3) inches to the Centre line of the block between Eleventh

Street and Twelfth Street; thence easterly along said centre line of the block parallel with Eleventh Street fifty (50) feet; thence southerly and parallel with Avenue C one hundred three (103) feet three (3) inches to the northerly side or line of Eleventh Street, and thence westerly along the same fifty (50) feet to the point or place of beginning.

All that certain lot, piece or parcel of land with the buildings thereon erected, situate, lying and being in the Eleventh Ward in the City of New York, and bounded and described as follows: Beginning at a point on the Northerly side of Tenth Street distant two hundred thirty-three (233) feet easterly from the northeasterly corner of Tenth Street and Avenue C, and thence northerly and parallel with Avenue C eighty (80) feet to the point or place of beginning, running northerly from that point and parallel with Avenue C fourteen (14) feet nine (9) inches; thence easterly and parallel with Tenth Street twenty-five (25) feet; thence southerly and again parallel with Avenue C fourteen (14) feet nine (9) inches; thence westerly and again parallel with Tenth Street, twenty-five (25) feet, to the point or place of beginning.

All that certain piece of land, with the buildings thereon situate, lying and being in the Eleventh Ward of the City of New York on the northerly side of Tenth Street and beginning at a point two hundred eight (208) feet distant easterly from the northeasterly corner of Tenth Street and Avenue C, and running thence easterly along the northerly side of Tenth Street, twenty-five (25) feet; thence northerly on a line parallel with Avenue C ninety-four (94) feet nine and one-half (9½) inches, to the centre line of the block between Tenth Street and Eleventh Street; thence westerly on a line parallel with Tenth Street twenty-five (25) feet; thence southerly on a line parallel with Avenue C ninety-four (94) feet nine and one-half (9½) inches, to Tenth Street, aforesaid, the place of beginning.

Also, six other lots, pieces and parcels of ground and premises, with the buildings thereon, situate, lying and

being in the Eleventh Ward of the City of New York and bounded and described as follows : Beginning at a point on the southerly side of Eleventh Street distant one hundred eight (108) feet easterly from the southeasterly corner of Avenue C and Eleventh Street ; and running thence easterly and along the southerly side of Eleventh Street seventy-five (75) feet ; thence southerly and parallel with Avenue C one hundred eighty-nine (189) feet seven (7) inches, more or less, to the northerly side of Tenth Street ; thence westerly and along the northerly side of Tenth Street seventy-five (75) feet, and thence northerly and parallel with the Avenue C one hundred eighty-nine (189) feet seven (7) inches, more or less, to the place of beginning.

All those two certain lots, pieces or parcels of land, with the buildings thereon, situate, lying and being on the northerly side of Eleventh Street, in the Eleventh Ward of the City of New York, and known and distinguished on a certain map filed by Frederick De Puyster, Master in Chancery in the Office of the Register of the City and County of New York, entitled " map of two hundred and forty lots of land situate at Burnt Mill Point in the Eleventh Ward of the City of New York," by the numbers Eighty-five (85) and Eighty-six (86) and more fully bounded and described as follows : Beginning at a point on the northerly side of Eleventh Street in said city, distant two hundred thirty-three feet (233) easterly from the northeasterly corner of Avenue C and Eleventh Street, running thence northerly and parallel with Avenue C one hundred three (103) feet (3) inches ; thence easterly and parallel with Eleventh Street fifty (50) feet ; thence southerly and parallel with Avenue C one hundred three (103) feet three (3) inches to Eleventh Street, and thence westerly along Eleventh Street fifty (50) feet to the place of beginning. Also, all those four certain lots, pieces or parcels of land situate, lying and being in the Eleventh Ward of the City of New York, bounded and described as follows : Beginning at a point on the southerly side of Eleventh Street distant one hundred eighty-

three (183) feet easterly from the easterly line of Avenue C, running thence southerly and parallel with Avenue C ninety-four (94) feet nine (9) inches to the centre line of the block, running thence easterly along said centre line one hundred (100) feet; thence northerly and parallel with Avenue C ninety-four (94) feet nine (9) inches to the southerly line or side of Eleventh Street; thence westerly along the southerly line of Eleventh Street one hundred (100) feet to the place of beginning.

No. 413 East Tenth Street Property.

All that certain lot, piece or parcel of ground, with the building thereon erected, which on a certain map filed by Frederick De Puyster, Master in Chancery (with his certificate endorsed thereon, dated February 1, 1837) in the office of the Register for the City and County of New York, entitled "Map of 240 lots of land situated at Burnt Mill Point in the Eleventh Ward of the City of New York," consisting of one lot of land thereon designated by the number "144" (one hundred and forty-four), bounded as follows, *viz.:* Commencing at a point on the northerly side of Tenth Street, distant one hundred and ninety-three (193) feet southeasterly from the northeasterly corner of Avenue C and Tenth Street; running thence northeasterly along lot 145 on said map ninety-four (94) feet nine (9) inches to the centre of the block; thence southeasterly along the centre of the block twenty-five (25) feet to lot 143 on said map; thence southwesterly along said lot 143 ninety-four (94) feet nine (9) inches to Tenth Street, and thence northwesterly along Tenth Street twenty-five (25) feet to the point of beginning.

Lenox Avenue and One hundred and Sixteenth Street Property.

All those certain lots, pieces or parels of land situate lying and being in the Twelfth Ward of the

City of New York, and which taken together are bounded and described as follows : Commencing at the corner formed by the intersection of the northerly line of One hundred and sixteenth Street with the westerly side of Lenox Avenue (formerly Sixth Avenue), running thence northerly along said westerly line of Lenox Avenue two hundred one (201) feet ten (10) inches to the southerly line of One hundred and seventeenth Street; thence westerly along said southerly line of One hundred and seventeenth Street two hundred (200) feet; thence southerly and parallel with Lenox Avenue two hundred one (201) feet ten (10) inches to the northerly line of One hundred and sixteenth Street; thence easterly along said northerly line of One hundred and sixteenth Street two hundred (200) feet to the point or place of beginning. Being the same premises conveyed by The Metropolitan Traction Company of New York to the Lexington Avenue and Pavonia Ferry Railroad Company by deed dated January 15, 1894, and recorded in the Office of the Register of the City and County of New York in Block Series (Conveyances) Section 7, Liber 20, at page 456 and indexed under Block Number 1901, subject, however, to the existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

Lexington Avenue and Ninety-ninth Street Property.

All that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of New York, and bounded and described as follows: Beginning at the northeasterly corner of Fourth Avenue and Ninety-ninth Street, running thence northwardly along the easterly line of Fourth Avenue two hundred one (201) feet ten (10) inches to the southerly line of One hundredth Street; thence eastwardly along the southerly line of One hundredth Street four hundred five (405) feet; thence southwardly and parallel with Fourth Avenue two hundred one (201) feet ten (10)

inches to the northerly line of Ninety-ninth Street, and thence westwardly along the northerly line of Ninety-ninth Street four hundred five (405) feet to the point or place of beginning. Being the same premises conveyed by The Metropolitan Traction Company of New York to the Lexington Avenue and Pavonia Ferry Railroad Company by deed dated January 15, 1894, and recorded in the Office of the Register of the City and County of New York, in Block Series (Conveyances), Section 6, Liber 22, page 157 and indexed under Block Number 1627. Subject, however, to the existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

Lexington Building.

All those certain lots, pieces or parcels of land with the building or buildings thereon erected, situate, lying and being in the Twelfth Ward of the City of New York, bounded and described as follows: Commencing on the northerly side of Twenty-fifth street, at a point distant one hundred seven (107) feet six (6) inches westerly from the corner formed by the intersection of the northerly line of Twenty-fifth Street with the westerly line of Third Avenue, and running thence westerly along the northerly line of Twenty-fifth Street, one hundred eighty-seven (187) feet six (6) inches or thereabouts, and thence running northerly and parallel, or nearly so, with Third Avenue one hundred ninety-seven (197) feet five (5) inches to the southerly side of Twenty-sixth Street and thence running easterly along the southerly side of Twenty-sixth Street one hundred eighty-six (186) feet, or thereabouts, and thence running southerly and parallel with Third Avenue ninety-eight (98) feet nine (9) inches to the centre line of the block between Twenty-fifth and Twenty-sixth Streets, and thence running easterly along the said centre line of the block one (1) foot six (6) inches, thence running southerly and parallel with Third Avenue, ninety-eighth (98) feet nine

(9) inches to the northerly line of Twenty-fifth Street, being the same premises which were heretofore conveyed by the following conveyances, viz.:

Deed of Ruth A. Brown to The Metropolitan Traction Company of New York, dated May 31, 1894, and recorded in the Office of the Register of the City and County of New York on June 4, 1894, in Block Series (Conveyances) Section 3, Liber 30, page 128 and indexed under Block Number 881. Deeds of John D. Crimmins to The Metropolitan Traction Company of New York, dated respectively July 13, 1893, February 21, 1894, and August 31, 1894, and respectively recorded in said Register's Office on July 24, 1893, March 5, 1894, and October 18, 1894, in Block Series (Conveyances) Section 3, Liber 21, page 408, Liber 26, page 113 and Liber 31, page 57 and all indexed under Block Number 881. Deed of Alonzo C. Munson to The Metropolitan Traction Company of New York, dated June 15, 1894, and recorded in said Register's Office on June 18, 1894, in Block Series (Conveyances) Section 3, Liber 29, page 176 and indexed under Block Number 881.

Subject, however, to an existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

Belt Line Repair Shops.

All that certain lot, piece or parcel of land, together with the buildings and improvements thereon, lying and being in the Twenty-second Ward of the City of New York, situate on the north side of West Fifty-third Street, between Tenth and Eleventh Avenues, and known as lot number 768 on a certain map of John Hoppers's Estate, filed in the Register's Office of the City of New York on December 31, 1864, as map No. 660 and being bounded and described as follows: Beginning at a point on the northerly side of Fifty-third Street distant four hundred and seventy-five (475) feet westwardly from the westerly side of Tenth Avenue,

and running thence westwardly along said northerly side of Fifty-third Street twenty-five (25) feet; thence northerly on a line parallel with Tenth Avenue forty-eight (48) feet three and three-quarters (3¾) inches; thence southwesterly twenty-five (25) feet or thereabouts to a point in a line distant forty-four (44) feet ten (10) inches northerly from the northerly side of Fifty-third Street, and thence southerly on a line parallel with Tenth Avenue forty-four (44) feet ten (10) inches to the northerly side of Fifty-third Street to the point or place of beginning. Being the same premises conveyed to the Metropolitan Traction Company of New York by Bertha Volkening by deed dated March 30, 1893, and recorded in the office of the Register of the City and County of New York on March 30, 1893, in Block Series (Conveyances) Section 4, Liber 21, page 283.

And also all those certain lots, pieces or parcels of land, together with the buildings and improvements erected thereon, situate, lying and being in the Twenty-second Ward of the City of New York and bounded and described as follows: Beginning at a point three hundred (300) feet easterly from the southeasterly corner of Eleventh Avenue and Fifty-fourth Street; thence easterly along the line of Fifty-fourth Street twenty-five (25) feet; thence southerly parallel with Eleventh Avenue, through the centre of the block to the line of property now or formerly owned by Garrit H. Striker one hundred fifty-six (156) feet; thence northwesterly along the line of said property twenty-five (25) feet three and one-quarter (3¼) inches; thence northerly parallel to Eleventh Avenue one hundred fifty-two (152) feet six and one-quarter (6¼) inches, to the point or place of beginning, be the said several dimensions more or less. Being the same premises conveyed by Andrew Doerrschuck and Annie, his wife, to The Metropolitan Traction Company of New York, by deed dated March 6, 1893, and recorded in the Office of the Register of the City and County of New York, on March 8, 1893, in Block Series (Conveyances)

Section 4, Liber 20, page 296 and indexed under Block Number 1082.

Chambers Street Leasehold.

All the leasehold rights of the Railway Company in and to all that certain lot, piece or parcel of land situate, living and being in the Seventh Ward of the City of New York, bounded and described as follows: Beginning at the corner formed by the intersection of the southerly line of Cherry Street with the westerly line of East Street, and running thence southerly along the westerly line of East Street one hundred (100) feet three (3) inches; thence westerly on a line parallel or nearly so with the southerly line of Cherry Street two hundred forty-five (245) feet six (6) inches; thence northerly on a line parallel or nearly so with the westerly line of East Street twenty-six (26) feet one (1) inch; thence easterly parallel or nearly so with said line of Cherry Street nineteen (19) feet eleven (11) inches; thence northerly parallel or nearly so with the said line of East Street seventy-five (75) feet to the said line of Cherry Street; thence easterly along said last mentioned line two hundred twenty-five (225) feet to the place of beginning, and known by the Street Number 505 Cherry Street. Also all the leasehold rights of the Railway Company in and to all that certain lot, piece or parcel of land situate lying and being on Cherry Street in said City immediately adjoining the above described premises on the westerly side thereof; which said lot is about twenty (20) feet in width in front and rear and seventy-five (75) feet in depth on each side.

Twenty-fourth Street Leasehold.

All the leasehold rights of the Railway Company in and to all those ten certain lots of ground, situate, lying and being in the Sixteenth Ward of the City of New York, distinguished on a map of certain lands of

Clement C. Moore, situate at Greenwich, in the City of New York, recorded in the Office of the Register of the City and County of New York, in Liber 634 of Conveyances, page 411, by the numbers 905 (nine hundred and five) to 908 (nine hundred and eight) and 936 (nine hundred and thirty-six) to 941 (nine hundred and forty-one) all inclusive; and bounded together as follows, *viz.*: Southeastwardly in front by Eleventh Avenue; southwestwardly by the half distance line between Twenty-third Street and Twenty-fourth Street; northwestwardly by lot numbered on the said map 935 (nine hundred and thirty-five) and northwestwardly by the said Twenty-fourth Street. Containing together in width along the said Eleventh Avenue and on the northwestwardly side thereof, ninety-eight (98) feet eight (8) inches, and on the northeastwardly and southwestwardly sides there of, two hundred twenty-five (225) feet, be the said several measurements more or less.

III.

STREET SURFACE RAILROADS AND RAILWAY ROUTES IN THE COUNTY OF NEW YORK, CITY OF NEW YORK, AND STATE OF NEW YORK, OPERATED BY THE RAILWAY COMPANY AS LESSEE, UNDER THE LEASES HEREINAFTER MENTIONED:

LINES LEASED TO AND OPERATED BY METROPOLITAN STREET RAILWAY COMPANY.

Lease of the Bleecker Street and Fulton Ferry Railroad Company to the Twenty-third Street Railway Company.

Dated January 10, 1876, by which all the railroads and railroad routes of the lessee for the term of ninety-nine years, said lease including the railroad operated along the streets described as follows: Commencing at Twenty-third Street and Eleventh Avenue, running along Eleventh Avenue to Fourteenth Street to

Fourth Avenue; and also commencing at the intersection of Fourteenth Street and Hudson Street and thence running southerly and easterly through the city upon various streets, to Fulton Ferry.

Lease of the Broadway and Seventh Avenue Railroad Company to The Hudson, West Street and Pavonia Ferry Railroad Company.

Dated May 13, 1890, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor and any extensions of said charter of the lessor and any extensions of said charter, said lease including the railroad operated along the streets, described as follows: Commencing at Fifty-ninth Street and Seventh Avenue; running thence through and along Seventh Avenue to Broadway; thence through and along Broadway to Fifteenth Street; and thence through and along University Place and certain other streets to Barclay Street; and thence through Barclay Street and Park Place to Broadway; and through Seventh Avenue, from Broadway to Greenwich Avenue to Macdougal Street to West Fourth Street, and through Thompson and Sullivan Streets to West Broadway; and also from Broadway and Twenty-Third Street, through Twenty-third Street to Lexington Avenue, thence through Lexington Avenue to Twenty-seventh Street.

Lease of the Central Park, North and East River Railroad Company to The Metropolitan Cross Town Railway Company and the Houston, West Street and Pavonia Ferry Railroad Company.

Dated October 14, 1892, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term

of the charter of the lessor and any extensions of said charter, said lease including the railroad operated along the streets described as follows: From Tenth Avenue and Fifty-ninth Street through Tenth Avenue, West Street and other Streets to the South Ferry; and also from Tenth Avenue at Fifty-ninth Street along Fifty-ninth Street to First Avenue; and thence through various other streets and avenues to the said South Ferry.

Lease of The Eighth Avenue Railroad Company to Metropolitan Street Railway Company.

Dated November 23, 1895, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of ninety-nine years from January 1, 1896, said lease including the railroad operated along the streets described as follows: Commencing at or near the intersection of Vesey Street and Broadway, thence running through Vesey Street to College Place, and through College Place, Church Street and Chambers Street to West Broadway, and through West Broadway to Canal Street, and through Canal Street to Hudson Street, and through Hudson Street to Eighth Avenue, and through and along Eighth Avenue to the point where the street or road commonly called the McCombs Dam Road intersects or meets Eighth Avenue; thence through and along the said McCombs Dam Road to or near the westerly end of the bridge known as McCombs Dam Bridge, with an extension or branch running from the junction of West Broadway and Canal Street to Broadway, and also the extension of its railroad from the junction of McCombs Dam Road along Eighth Avenue to the Harlem River.

Lease of The Forty-Second Street and Grand Street Ferry Railroad Company to The Metropolitan Crosstown Railway Company and The Houston, West Street and Pavonia Ferry Railroad Company.

Dated April 6, 1893, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor and any extensions of the charter, said lease including the railroad operated along the streets described as follows: Commencing at the ferry at the western extremity of Forty-second Street; thence through and along Forty-second Street, with a double track to Tenth Avenue; through and along Tenth Avenue to Thirty-fourth Street; through and Thirty-fourth Street, with a double track, to Broadway; through and along Broadway to Twenty-third Street; through and along Twenty-third Street to Fourth Avenue; through and along Fourth Avenue and Union Square, with a double track, to Fourteenth Street; through and along Fourteenth Street, with a double track, to Avenue A; through and along Avenue A, with a double track, to Second Street, and thence along Avenue A, with a single track, to First Street; through and along First Street and Houston Street, with a single track, to Cannon Street; through and along Cannon Street, with a single track, to Grand Street; through and along Grand Street, with a single track, to Goerck Street, and thence through and along Grand Street, with a double track, to Grand Street ferry, at the foot of Grand Street, East River; and also from the intersection of Second Street and Avenue A through and along Second and Houston Streets, with a single track, to Goerck Street; thence through and along Goerck Street, with a single track, to Grand Street to Grand Street ferry.

Lease of The New York and Harlem Railroad Company (city line) to the Metropolitan Street Railway Company.

Dated June 11, 1896, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of nine hundred and ninety-nine years from July 1, 1896; said lease including the railroad operated along the streets described as follows:

Commencing at the intersection of Park Row, Ann Street and Broadway, to Centre Street, to Grand Street and Broom Street to Bowery, to Fourth Avenue, to Forty-second Street, to Madison Avenue, to One hundred and thirty-eighth Street; also on Eighty-sixth Street from Madison Avenue to First Avenue; on First Avenue to Ninety-third Street to Astoria Ferry; also extension on Thirty-second and Thirty-third Streets, Lexington Avenue and Thirty-fourth Street, from Fourth Avenue to Thirty-fourth Street Ferry.

Lease of The Ninth Avenue Railroad Company to The Houston, West Street and Pavonia Ferry Railroad Company.

Dated March 12, 1892, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of ninety-nine years, said lease including the railroad operated along the streets described as follows: Commencing at the intersection of Broadway and Fulton Street, running through Fulton Street to Greenwich Street; thence through and along Greenwich Street to Ninth Avenue; thence through and along Ninth Avenue and Columbus Avenue to the Grand Boulevard; thence through and along the said Boulevard to Amsterdam Avenue (formerly Tenth Avenue), and thence along Amsterdam Avenue to Manhattan Street, returning through Amsterdam Avenue, the Boulevard, Columbus Avenue, Ninth Avenue, Gansevoort Street and Wash-

ington Street to Fulton Street; thence through Fulton Street to Broadway to the place of beginning; also on Fifty-third Street from Seventh Avenue to Ninth Avenue.

Lease of The Second Avenue Railroad Company to Metropolitan Street Railway Company.

Dated January 28, 1898, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor and any extensions of said charter, said lease including the railroad operated along the streets described as follows: Upon First Avenue and Second Avenue, through various streets and avenues in the City of New York from the Harlem River to Peck Slip, with extensions and connections from Eighth Avenue through the transverse road in Central Park, along Eighty-fifth Street, connecting with Madison Avenue. Also an extension from Bowery through Worth Street to Broadway. Also an extension from Second Avenue and Tenth Street, through Tenth Street and Astor Place to Broadway.

Lease of Sixth Avenue Railroad Company to The Houston, West Street and Pavonia Ferry Railroad Company.

Dated February 1, 1892, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of eight hundred years, said lease including the railroads operated along the streets described as follows: Commencing at the intersection of Fifty-ninth Street and Sixth Avenue, running thence southerly along Sixth Avenue to Carmine Street; thence through Carmine Street to Varick Street; thence through Varick Street to Canal Street; thence through Canal Street to West Broadway; and also from the intersection of West

Broadway and Canal Street, thence through and along West Broadway to Vesey Street; thence through Vesey Street to Broadway; and also through Church Street to Chambers Street, and through Chambers Street to Broadway; and also upon and along Lenox Avenue from One hundred and tenth Street to the Harlem River, also on West Third Street from Carmine to Sullivan Streets. Also on Fifty-third Street from Sixth Avenue to Seventh Avenue.

Lease of the Twenty-third Street Railway Company to The Houston, West Street and Pavonia Ferry Railroad Company.

Dated April 25, 1893, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor, and any extensions of said charter, said lease including the railroad operated along the streets described as follows: Upon Twenty-third Street from the North River to the East River, and upon Second Avenue from its intersection with Twenty-third Street to Twenty-ninth Street, and thence through Twenty-ninth Street, and also through Twenty-eighth Street to First Avenue, and thence through First Avenue to Thirty-fourth Street.

Lease of the Third Avenue Railroad Company to Metropolitan Street Railway Company.

Dated April 13, 1900, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of nine hundred and ninety-nine years, said lease including the railroad operated along the streets described as follows: Beginning at the intersection of Park Row and Broadway; thence extending along Park Row, the Bowery, Third Avenue to the Harlem River; also extending from the North River at the foot of One hundred and thirtieth Street, thence through One hundred and

thirtieth Street, Manhattan Street and One hundred and twenty-fifth Street to the East River; also extending from One hundred and twenty-fifth Street through Amsterdam Avenue to the terminus of said Avenue; and also on One hundred and thirtieth Street from Third Avenue to a point at or near Lexington Avenue.

General description of property and after acquired property clause.

TOGETHER WITH ALL AND SINGULAR the improvements on said properties, and all and singular the railroads, lands, buildings, structures, fixtures, privileges, franchises, rights of way, trackage rights, contracts, consents, leaseholds, easements and other rights and interest now owned by the Railway Company; also all and singular the tracks, side tracks or sidings, switches, rails, bridges, fences, buildings, depots, station-houses, power-houses, car-houses, machine shops, repair shops and other shops, and all other buildings, improvements, erections and structures, and all dynamos, belting, engines, boilers, regulators, meters, poles, trolleys, conduits, feeders, cables, wires, switchboards, lamps and machinery for producing, generating and distributing electricity or power; and also all and singular the rolling stock, equipment, motors, engines, tenders, carriages, cars, trucks, horses, harness, tools, implements, furniture, fixtures, machinery, materials, coal, wood, oil, fuel and other supplies; and also all maps, drawings, profiles, licenses, records, deeds, contracts and agreements, patents and patented inventions and processes now owned by the Railway Company, all of which personal property is hereby declared to be fixtures and appurtenances of said railroads; and also all present or future improvements and additions made or to be made upon and to any or all of said railroads or property, real and personal, and any and all equipment therefor and renewals or replacements of the same or of any part thereof or of the appurtenances; and also all and every other railroad, which the Railway Company shall hereafter acquire or construct by means of the proceeds

of any of the bonds hereby secured, and all power-houses, real-estate, equipment and other property, real or personal, appurtenant thereto.

AND ALL AND SINGULAR the tolls, fares, rents, issues, earnings, income, profits and other benefits and advantages of, or in any wise growing out of, all or any of the said several railroads, franchises and property, and all and singular the tenements, hereditaments and appurtenances to any of the said railroads or property belonging, or in any wise appertaining, and the reversion or reversions, remainder or remainders thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well at law as in equity, of the Railway Company, in and to the same and every part and parcel thereof with the appurtenances.

IV.

Pledge of shares of stock.

AND ALSO ALL THE RIGHT, TITLE AND INTEREST of the Railway Company in and to the following shares of stock which are now pledged and deposited with the Guaranty Trust Company of New York under the mortgage dated February 1, 1897, from the Railway Company to said Guaranty Trust Company of New York, as Trustee, securing the General Mortgage and Collateral Trust Five Per Cent. Gold Bonds of the Railway Company, viz.:

1. Fourteen thousand (14,000) shares of the capital stock of The Broadway and Seventh Avenue Railroad Company of the par value of one hundred dollars ($100) each.

2. Four thousand (4,000) shares of the capital stock of the Forty-second Street and Grand Street Ferry Railroad Company of the par value of one hundred dollars ($100) each.

3. Three thousand (3,000) shares of the capital stock of the Central Park, North and East River Railroad

Company of the par value of one hundred dollars ($100) each.

4. Nine thousand, nine hundred (9,900) shares of the capital stock of the Thirty-fourth Street Cross-Town Railway Company, of the par value of one hundred dollars ($100) each.

Habendum. TO HAVE AND TO HOLD all and singular said railroads, leaseholds, property and franchises, unto the Trustee, its successors in the trust, and its or their assigns, forever;

SUBJECT, NEVERTHELESS, as to the property embraced therein respectively, to the lien thereon of the mortgages or deeds of trust securing the issues of bonds in paragraph (2) of Article Second hereof specified; and as to said shares of stock, to the said mortgage under which the same are deposited; and subject further to the said lease of said railroads, railroad routes, properties and franchises to the said Interurban Street Railroad Company, and to all and singular the terms and provisions thereof;

Grant in trust. BUT IN TRUST NEVERTHELESS for the equal and proportionate benefit and security of all holders of the bonds and coupons issued and to be issued under and secured by this indenture, and for the enforcement of the payment of said bonds and interest, when payable, according to the tenor, purport and effect of such bonds and coupons, and to secure the performance and observance of and compliance with the covenants and conditions of this indenture, without preference, priority or distinction as to lien or otherwise of one bond over any other bond by reason of priority in the issue, sale or negotiation thereof, or by reason of the purpose of its issue, so that each and every bond issued or to be issued hereunder shall have the same right, lien and privilege under and by virtue of this indenture, and so that the principal and interest of every such bond shall, subject to the terms hereof, be equally and

proportionately secured hereby, as if all had been duly issued, sold and negotiated simultaneously with the execution and delivery hereof.

THIS INDENTURE FURTHER WITNESSETH that the Railway Company has agreed and covenanted, and hereby does agree and covenant, with the Trustee, and with the respective holders from time to time of the said bonds and coupons, or any thereof, as follows, that is to say:

Issue of bonds.

ARTICLE FIRST.—The coupon and registered bonds issued under and secured by this indenture, together with the interest coupons pertaining to the coupon bonds, shall be substantially of the tenor and purport above recited, and shall be known as the "Refunding One Hundred Year Gold Bonds" of the Railway Company. The coupon bonds shall be of the denomination of $1,000 each, and the registered bonds shall be of the denomination of $1,000 each or of such multiples of $1,000 as the Railway Company may from time to time authorize by resolution of its board of directors, and said bonds, as well as the temporary bonds hereinafter mentioned, shall bear such rate of interest not exceeding four per cent. per annum, as the board of directors of the Railway Company may from time to time determine as to any bonds not actually issued. Registered bonds shall bear interest only from the first day of April or October, as the case may be, next preceding their respective dates. Said bonds shall be numbered, and shall from time to time be executed on behalf of the Railway Company by its president or a vice-president, and its corporate seal shall be thereunto affixed and attested by its secretary or an assistant secretary. The bonds shall then be delivered to the Trustee for certification by it, and the Trustee shall thereupon certify and deliver said bonds to the Railway Company, or upon its order, as hereinafter in Article Second hereof provided, and not otherwise. In case the officers who shall have signed and sealed any of said bonds shall cease to be such officers of the Railway

Execution of bonds.

Company before the bonds so signed and sealed shall have been actually certified by the Trustee or delivered, such bonds may, nevertheless be adopted by the Railway Company, and, upon the written request of the Railway Company, be certified and delivered, subject to the provisions of Article Second hereof, as though the persons who signed and sealed such bonds had not ceased to be officers of the Railway Company. The coupons to be attached to coupon bonds shall be authenticated by the engraved signature of the present treasurer or of any future treasurer of the Railway Company, and the Railway Company may adopt and use for that purpose the engraved signature of any person who shall have been such treasurer, notwithstanding the fact that he may have ceased to be such treasurer at the time when such bonds shall be actually certified and delivered or issued. The first coupons shall be payable October 1, 1902, and shall represent interest to that date from April 1, 1902. The Railway Company and the Trustee may deem and treat the bearer of any coupon bond hereby secured, which shall not at the time be registered as hereinafter authorized, and the bearer of any coupon for interest on any such bond, whether registered or not, as the absolute owner of such bond or coupon for the purpose of receiving payment thereof and for all other purposes whatsoever, and neither the Railway Company nor the Trustee shall be affected by any notice to the contrary. Only such bonds as shall bear thereon endorsed a certificate substantially in the form hereinbefore recited, executed by the Trustee, shall be secured by this indenture or entitled to any lien, right, or benefit hereunder; and such certificate of the Trustee upon any such bond executed on behalf of the Railway Company shall be conclusive evidence that the bond so certified has been duly issued hereunder and that the holder is entitled to the benefit of the trusts hereby created. Before certifying or delivering any coupon bond (except in exchange for scrip as hereinafter provided), all coupons

Coupons.

appertaining thereto then matured shall be cut off, canceled and delivered by the Trustee to the Railway Company. The aggregate amount of all the bonds which may be certified, issued and outstanding under this indenture or entitled to the security hereof shall not in any event exceed the sum of sixty-five million dollars ($65,000,000) face value of the principal of said bonds at any one time outstanding.

Total authorized issue $65,000,000.

The Railway Company further agrees and covenants that it will keep, at an office or agency to be maintained by it in the City of New York, or at some bank or trust company in said city, a sufficient register or registers of bonds issued hereunder, which shall at all reasonable times be open for inspection by the Trustee and any holder of bonds issued hereunder; and that, upon presentation for such purpose, the Railway Company will register or cause to be registered therein, under such reasonable regulations as it may prescribe, any bonds issued under the provisions hereof. The holder of any coupon bond issued hereunder may have the ownership thereof registered on said books, and such registry noted on the bonds, after which no transfer shall be valid unless made on the said books by the registered holder thereof, in person or by his attorney duly authorized, and similarly noted on the bond; but the same may be discharged from registry by being in like manner transferred to bearer, and thereupon transferability by delivery shall be restored; but such bond may again and from time to time be registered or transferred to bearer as before. Such registration, however, shall not affect the negotiability of the coupons, but every such coupon shall continue to pass by delivery, and shall remain payable to bearer. The holder of any coupon bond or bonds may, at his option, at any time surrender the same for cancellation with all unmatured coupons belonging thereto and receive in exchange therefor a like amount in registered bonds without coupons, as hereinafter provided; or the registered holder of any registered bond or bonds may, at his option, at any time, surrender the same for cancel-

Registration of bonds

lation and receive in exchange therefor a like amount in coupon bonds, as hereinafter provided.

Exchange of coupon for registered bonds.

Whenever any coupon bond or bonds issued under and secured by this indenture, together with all unmatured coupons thereto belonging, shall be surrendered for exchange for registered bonds, the Railway Company shall issue, and the Trustee shall certify and deliver, in exchange for such coupon bond or bonds, a like amount in registered bonds without coupons and bearing the same rate of interest. Whenever any registered bond shall be surrendered for exchange for a coupon bond or bonds, the Railway Company shall issue, and the Trustee shall certify and deliver, in exchange for such registered bond, a like amount in coupon bonds, bearing the same rate of interest, with coupons attached maturing on and after the next ensuing interest due date on such surrendered registered bond. Whenever any registered bond shall be surrendered for transfer, the Railway Company shall issue, and the Trustee shall certify and deliver to the transferee, a like amount in new registered bonds bearing the same rate of interest. In every case of such exchange or transfer, the said Trustee shall forthwith cancel the surrendered bond or bonds and coupons, and deliver the same to the Railway Company, but the numbers shall be preserved by the Railway Company so as to identify and show for what registered or coupon bonds the registered bonds have been exchanged, and for what registered bonds the coupon bonds have been exchanged. The numbers of the coupon bonds so to be issued shall correspond with the numbers of any coupon bonds theretofore surrendered for registered bonds, or may be any unissued numbers of the authorized issue. For any exchange of coupon bonds for registered bonds, or for any transfer of registered bonds, or for any exchange of registered bonds for coupon bonds, the Railway Company may make a charge not exceeding one dollar for each new registered or coupon bond issued upon such exchange or transfer.

Exchange of registered bonds for coupon bonds.

Transfer of registered bonds.

Issue of temporary bonds.

Until the said coupon and registered bonds intended to be secured hereby can be engraved and prepared, the Railway Company may execute and deliver printed or lithographed bonds, dated, and bearing interest from, April first 1902, registered or negotiable by delivery, and substantially of the tenor of the bonds hereinbefore recited, except that no coupons shall be attached to said bonds; and the same may be for the payment of one thousand dollars ($1,000) or any multiple thereof, as the Railway Company shall determine. All such printed or lithographed bonds shall bear upon their face the words "Temporary Refunding One Hundred Year Gold Bond," and shall be duly certified by the Trustee in the same manner as the bonds hereinbefore described, and such certificate shall be conclusive evidence that the bond so certified has been duly issued hereunder, and that the holder is entitled to the benefit of the trusts hereby created. Such printed or lithographed bonds duly issued and certified hereunder shall be exchangeable for engraved bonds bearing the same rate of interest to be issued hereunder, and upon any such exhange, said printed or lithographed bonds shall be forthwith canceled by the Trustee and delivered to the Railway Company. Until so exchanged, the said printed or lithographed bonds shall in all respects be entitled to the lien and security of these presents, as bonds issued and certified hereunder; and interest when and as payable shall be paid and endorsed thereon.

Issue of certificates or scrip.

The Railway Company may also issue certificates or scrip entitling the bearer to fractional amounts less than one thousand dollars of the coupon bonds to be issued hereunder and secured hereby. Such certificates or scrip, when presented to the Railway Company in amounts of one thousand dollars, or any multiple of one thousand dollars, shall be exchangeable for a like amount, face value, of the coupon bonds hereby secured, with all coupons maturing after the date of the scrip attached, but in the meantime the said certificates or scrip shall not bear any interest.

Replacing bonds mutilated or destroyed.

In case any coupon bond issued under this indenture, with the coupons thereto appertaining, or any registered bond without coupons, shall become mutilated or be destroyed, the Railway Company, in its discretion may issue, and thereupon the Trustee may certify and deliver a new bond of like tenor and date, bearing the same serial number as the one mutilated or destroyed, in exchange and substitution for and upon cancellation of the mutilated bond or coupons, or in lieu of and substitution for the bond or coupons, if destroyed. The applicant for a substituted bond or coupons shall furnish to the Railway Company and to the Trustee evidence of the destruction of such bond or coupons so destroyed, which evidence shall be satisfactory to the Railway Company and to the Trustee in their discretion; and said applicants shall also furnish indemnity satisfactory to both the Railway Company and the Trustee in their discretion.

Appropriation of bonds.

ARTICLE SECOND.—The bonds issued and to be issued under and secured by this indenture shall be appropriated as follows:

The first $11,000,000 of bonds.

(1.) $11,000,000 face value of said bonds shall be certified and delivered to the Railway Company, or upon its order, on filing with the Trustee from time to time a copy of a resolution of the board of directors of the Railway Company, certified under its corporate seal by its secretary or an assistant secretary, requesting such delivery.

$48,196,000 to be issued on deposit of outstanding old bonds and collateral bonds.

(2.) $48,196,000 face value of said bonds shall be issued from time to time, and shall be certified and delivered by the Trustee, when and as called for by the Railway Company, against the deposit with the Trustee, as security for the bonds issued and to be issued hereunder, of an equal amount, face value, of any of the following mentioned outstanding old bonds and collateral bonds, or upon the cancellation and de-

posit with the Trustee of an equal amount of outstanding old bonds, that is to say:

A.

BONDS SECURED BY LIEN UPON PROPERTIES OWNED BY THE RAILWAY COMPANY.	Description of outstanding old bonds and collateral bonds.
General Mortgage and Collateral Trust Five Per Cent. Gold Bonds of the Metropolitan Street Railway Company, due February 1, 1997, secured by mortgage to the Guaranty Trust Company of New York, Trustee, dated February 1, 1897, to the aggregate amount of	$12,500,000
First Mortgage Five Per Cent. Gold Bonds of The Lexington Avenue and Pavonia Ferry Railroad Company, due September 1, 1993, secured by mortgages to Central Trust Company of New York, Trustee, dated August 24, 1893, and March 1, 1895, to the aggregate amount of	5,000,000
First Mortgage Five Per Cent. Gold Bonds of The Columbus and Ninth Avenue Railroad Company, due September 1, 1993, secured by mortgages to The New York Guaranty and Indemnity Company, Trustee, dated August 24, 1893, and March 1, 1895, to the aggregate amount of	3,000,000
First Mortgage Five Per Cent. Bonds of The Broadway Surface Railroad Company, due July 1, 1924, secured by mortgage to William H. Hays, Trustee, dated July 1, 1884, to the aggregate amount of	1,500,000
Second Mortgage Five Per Cent. Bonds of The Broadway Surface Railroad Company, due July 1, 1905, secured by mortgage to Francis A. Palmer, Trustee, dated June 1, 1885, to the aggregate amount of	1,000,000
Five Per Cent. First Mortgage Bonds of The Metropolitan Crosstown Railway Company, due April 1, 1920, secured by mortgage to the New York Security and Trust Company, Trustee, dated April 1, 1890, to the aggregate amount of	600,000
Five Per Cent. Bonds of the South Ferry Railroad Company, due April 1, 1919, secured by mortgage to the Central Trust Company of New York, as Trustee, dated April 1, 1889, to the aggregate amount of	350,000
	$23,950,000

B.

BONDS SECURED BY LIEN UPON PROPERTIES LEASED TO THE RAILWAY COMPANY AND WHICH BONDS THE RAILWAY COMPANY DESIRES TO ACQUIRE.

First Mortgage Five Per Cent. Bonds of The Broadway and Seventh Avenue Railroad Company, due June 1, 1904, secured by mortgage to Robert Buck, Trustee, dated June 1, 1883, to the aggregate amount of	$1,500,000
Second Mortgage Five Per Cent. Bonds of The Broadway and Seventh Avenue Railroad Company, due July 1, 1914, secured by mortgage to William H. Hays, Trustee, dated July 1, 1884, to the aggregate amount of	500,000
First Consolidated Mortgage Five Per Cent. Gold Bonds of The Broadway and Seventh Avenue Railroad Company, due December 1, 1943, secured by mortgage to The New York Guaranty and Indemnity Company, Trustee, dated December 22, 1893, to secure 12,500 bonds of $1,000 each, of which bonds numbered 1 to 7650 inclusive are outstanding, amounting in the aggregate to and bonds numbered from 7651 to 12,500 inclusive are held by the Trustee under said mortgage for the purpose of acquiring in whole or in part the above mentioned First and Second Mortgage Bonds of The Broadway and Seventh Avenue Railroad Company, the above mentioned First and Second Mortgage Bonds of the Broadway Surface Railroad Company, and the above mentioned Five Per Cent. Bonds of the South Ferry Railroad Company, all of which amount in the aggregate to $4,850,000.	$7,650,000
General Consolidated Mortgage Five Per Cent. Bonds of The Second Avenue Railroad Company, in the City of New York, due November 1, 1909, secured by mortgage to the Central Trust Company of New York, as Trustee, dated January 1, 1885, to the aggregate amount of	1,000,000
First Consolidated Mortgage Five Per Cent. Gold Bonds of The Second Avenue Railroad Company, in the City of New York, due February 1, 1948, secured by mortgage to the Guaranty Trust Company of New York, as Trustee, dated January 20, 1898, to secure bonds to the aggregate amount of $7,000,000, of which there are outstanding bonds to the aggregate amount of	5,184,000

and coupon bonds of the principal amount of $1,000 each numbered from 5185 to 7000 inclusive are held by the Trustee under said mortgage for the purpose of paying or acquiring in whole or in part the above mentioned General Consolidated Mortgage Bonds and certain Debenture Bonds of said Railroad Company hereinafter mentioned, which amount in the aggregate to $1,816,000.	
Consolidated Mortgage Seven Per Cent. Bonds of the Central Park, North and East River Railroad Company, due December 1, 1902, secured by mortgage to The Farmers' Loan & Trust Company, as Trustee, dated December 1, 1872, to the aggregate amount of	1,200,000
Bonds of the Bleecker Street and Fulton Ferry Railroad Company, extended to January 1, 1950, at four per cent., secured by mortgage dated January 2, 1865, under which The State Trust Company or its successor is now substituted Trustee, to the aggregate amount of	700,000
First Mortgage Six Per Cent. Extended Bonds of the Twenty-third Street Railway Company, due January 1, 1909, secured by mortgage to Darius R. Mangam, as Trustee, dated May 1, 1873, to the aggregate amount of	250,000
First Mortgage Six Per Cent. Extended Bonds of the Forty-second Street and Grand Street Ferry Railroad Company, due January 1, 1909, secured by mortgage under which Henry A. Robinson is now substituted Trustee, dated April 1, 1873, to the aggregate amount of.....	$336,000
	$18,820,000

C.

BONDS SECURED BY LIEN UPON PROPERTIES FORMING PART OF, OR USED IN CONNECTION WITH, THE RAILWAY COMPANY'S SYSTEM, AND WHICH BONDS THE RAILWAY COMPANY DESIRES TO ACQUIRE.

First Mortgage Five Per Cent. Gold Bonds of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, due October 1, 1996, secured by mortgage to the Central Trust Company of New York, as Trustee, dated October 1, 1896, to the aggregate amount of	$1,500,000

First Mortgage Five Per Cent. Gold Bonds of the Thirty-fourth Street Crosstown Railway Company, due April 1, 1996, secured by mortgage to the Central Trust Company of New York, as Trustee, dated April 1, 1896, to the aggregate amount of.....	1,000,000
First Mortgage Four Per Cent. Gold Bonds of the Fulton Street Railroad Company, due November 1, 1995, secured by mortgage to the Guaranty Trust Company of New York, as Trustee, dated November 1, 1895, to the aggregate amount of	500,000
First Mortgage Six Per Cent. Bonds of The Central Crosstown Railroad Company of New York, due November 1, 1922, secured by mortgage to The American Loan and Trust Company, Trustee, dated November 1, 1882, to the aggregate amount of.....	250,000
Four Per Cent. Extended Bonds of The Christopher and Tenth Street Railroad Company, due October 1, 1918, secured by mortgage, under which the Guaranty Trust Company of New York is now substituted Trustee, dated October 1, 1878, to the aggregate amount of.....	210,000
	$3,460,000

D.

BONDS SECURED BY LIEN UPON REAL ESTATE OWNED BY THE RAILWAY COMPANY.

Bond of Oren Root, jr., due September 1, 1902, bearing interest at four per cent. per annum, guaranteed by the Railway Company, and secured by mortgage to The Mutual Life Insurance Company of New York, dated September 20, 1899, for the principal amount of.....	$950,000
Bond of John D. Crimmins, due February 20, 1894, bearing interest at five per cent. per annum, secured by mortgage to The Mutual Life Insurance Company of New York, dated February 20, 1893, for the principal amount of.....	150,000
Bond of John D. Crimmins, due August 1, 1897, bearing interest at five per cent per annum, secured by mortgage to The Eighth Avenue Railroad Company, July 19, 1892, upon which there remains due the principal amount of.....	$200,000
	$1,300,000

E.

BONDS NOT SECURED BY MORTGAGE.

Five Per Cent. Bonds of The Metropolitan Crosstown Railway Company, due May 1, 1901, to the aggregate amount of	$800,000
Debenture Bonds of The Second Avenue Railroad Company, in the City of New York, due January 12, 1909, to the aggregate amount of	216,000
Five Per Cent. Debenture Bonds of the Twenty-third Street Railway Company, due January 1, 1906, to the aggregate amount of	150,000
	$666,000
Total	$48,196,000

Provision for exchange of bonds hereunder for outstanding old bonds and collateral bonds.

Whenever the Railway Company shall tender, or cause to be tendered, to the Trustee, any of the said outstanding old bonds or collateral bonds (whether before or after the payment or maturity of outstanding old bonds or the maturity of collateral bonds), with all the unmatured coupons thereunto appertaining, the Trustee shall, in exchange therefor, certify and deliver to the Railway Company, or upon its order, refunding bonds hereunder of a face amount equal to the face amount of the bonds so received by the Trustee; but no refunding bonds shall be certified or delivered by the Trustee hereunder in exchange for the above-mentioned First and Second Mortgage Bonds of The Broadway and Seventh Avenue Railroad Company, or for the above mentioned First and Second Mortgage Bonds of The Broadway Surface Railroad Company, or for the above mentioned Five Per Cent. Bonds of the South Ferry Railroad Company, unless and until the Trustee hereunder shall have received proof satisfactory to it that no First Consolidated Mortgage Five Per Cent Gold Bonds of The Broadway and Seventh Avenue Railroad Company have been issued for the purpose of paying or acquiring the bonds so tendered; and no refunding

bonds shall be certified or delivered by the Trustee hereunder in exchange for the above mentioned General Consolidated Mortgage Bonds or for the Debenture Bonds of The Second Avenue Railroad Company, in the City of New York, unless and until the Trustee shall have received proof satisfactory to it that no First Consolidated Mortgage Five Per Cent. Gold Bonds of said Second Avenue Railroad Company have been issued for the purpose of paying or acquiring the bonds so tendered.

If any of said First Consolidated Mortgage Five Per Cent. Gold Bonds of the Broadway and Seventh Avenue Railroad Company shall at any time hereafter be issued in exchange for, or sold to pay or purchase, any of said First and Second Mortgage Bonds of The Broadway and Seventh Avenue Railroad Company, said First and Second Mortgage Bonds of The Broadway Surface Railroad Company, or said Five Per Cent. Bonds of the South Ferry Railroad Company, and the Railway Company shall tender or cause to be tendered to the Trustee said First Consolidated Mortgage Five Per Cent. Gold Bonds so issued, the Trustee shall, in exchange therefor, certify and deliver to the Railway Company or upon its order, refunding bonds hereunder of a face amount equal to the face amount of the bonds so received by the Trustee, upon receiving proof satisfactory to it that the underlying bonds, in exchange for or to pay or purchase which, said consolidated bonds are claimed to have been issued or sold, have been stamped and are held in accordance with the terms of said First Consolidated Mortgage of the Broadway and Seventh Avenue Railroad Company, dated December 22, 1893; and if any of said First Consolidated Mortgage Five Per Cent. Gold Bonds of said Second Avenue Railroad Company shall at any time hereafter be issued in exchange for, or sold to pay or purchase, any of said General Consolidated Mortgage Bonds or Debenture Bonds of said Second Avenue Railroad Company, and the Railway Company shall tender or

cause to be tendered to the Trustee said First Consolidated Mortgage Five Per Cent. Gold Bonds so issued, the Trustee, in exchange therefor, shall certify and deliver to the Railway Company, or upon its order, refunding bonds hereunder of a face amount equal to the face amount of the bonds so received by the Trustee, upon receiving proof satisfactory to it that the underlying bonds in exchange for, or to pay or purchase which, said consolidated bonds are claimed to have been issued or sold, have been stamped and are held in accordance with the terms of said First Consolidated Mortgage of said Second Avenue Railroad Company, dated January 20, 1898.

Provision for selling bonds in order to purchase outtanding old bonds and collateral bonds.

At any time or times on or after the maturity of any of the outstanding old bonds, or collateral bonds, or within twelve months before such maturity, the Railway Company may sell refunding bonds in order to provide the means to purchase or pay such outstanding old bonds, or to purchase such collateral bonds, as shall not theretofore have been delivered to the Trustee and held by it under this indenture, and which have matured, or are about to mature within twelve months, and the Trustee shall certify and deliver to the Railway Company, or upon its order, refunding bonds hereunder to a face amount equal to the face amount of such outstanding old bonds or collateral bonds which have matured, or are about to mature within twelve months; provided that the par value of the refunding bonds so certified and delivered shall simultaneously be deposited in cash with the Trustee in exchange therefor. Out of the cash so received by the Trustee, it shall, on demand of the Railway Company and upon delivery to the Trustee of the outstanding old bonds or collateral bonds so paid or purchased by the Railway Company, pay to the Railway Company a sum equal to the par amount of the bonds so paid or purchased.

Cancellation of mortgages securing outstanding old bonds when old bonds have been deposited.

Whenever all outstanding old bonds of any class shall have been surrendered in exchange for refunding bonds or shall have been paid, except any lost or

destroyed bonds for which satisfactory indemnity may have been given, the Trustee shall, at the request of the Railway Company, cancel all outstanding old bonds of such class, and shall cause the mortgage or trust deed securing the same to be canceled or discharged of record or the mortgaged premises and property embraced therein to be released from such mortgage or trust deed. The Trustee shall, at the request of the Railway Company, also cancel any outstanding old bonds held by the Trustee, although not constituting the entire outstanding issue of such bonds.

Deposited bonds to be stamped and held as security.

All outstanding old bonds and collateral bonds, which shall be acquired by the Trustee hereunder, shall be stamped with the words: "Not negotiable. Held in trust for the purposes declared in the Refunding Mortgage of the Metropolitan Street Railway Company, dated March 21, 1902," and (either with or without conversion into registered bonds at the option of the Trustee), shall be held by the Trustee as purchaser, as additional security for the payment of the bonds hereby secured. If, at the time of the maturity of any such outstanding old bonds, the holder thereof shall decline to sell and to deliver the same at face value and accrued interest, but shall require the payment thereof, then, upon payment and deposit thereof, the Trustee shall certify and deliver to the Railway Company, or upon its order, the same amount, face value, of refunding bonds hereby secured as though such matured bonds had been purchased by the Railway Company, and by it deposited with the Trustee hereunder; and by virtue of such payment of such bonds and the issue of such refunding bonds hereunder, the Trustee shall be forthwith subrogated to and vested with all the rights and liens of the holders of the bonds so paid.

Registry of deposited bonds.

The Railway Company shall provide and maintain books wherein it shall register as the property of the Trustee all bonds received by the Trustee hereunder,

and except as herein expressly provided, no such bond shall be canceled by the Trustee.

Collection of interest upon outstanding old bonds.

Neither the principal nor the interest of any outstanding old bond held by the Trustee hereunder shall be collected or required to be paid, unless or until proceedings shall have been instituted to foreclose the mortgage securing such bond, either by entry or by sale; but then and thereupon all the bonds of that issue then so held by the Trustee, and all interest thereon maturing on or subsequent to the date upon which the default was made for which such proceeding shall have been instituted, shall be entitled to payment, and payment thereof shall be enforced ratably and equally with all other bonds of such issue not held by the Trustee.

Certification of bonds upon satisfaction of underlying mortgages.

Upon the satisfaction and discharge of the record of the mortgage or mortgages securing any issue of outstanding old bonds, the Trustee shall, when and as called for by the Railway Company, certify and deliver to it an amount of refunding bonds equal to the aggregate amount hereinbefore specified of bonds secured by the mortgage or mortgages so satisfied and discharged, except so far as such refunding bonds shall theretofore have been issued against deposit of such outstanding old bonds with the Trustee, as hereinbefore provided, and except so far as any collateral bonds shall theretofore have been issued to pay or acquire bonds secured by the mortgage or mortgages so satisfied and discharged.

Certification of bonds upon provision for purchase or payment of underlying bonds.

Anything hereinbefore contained to the contrary notwithstanding, upon the Trustee in its unrestricted discretion being satisfied that sufficient provision has been made for the purchase or payment of each and every outstanding old bond of any issue hereinbefore described in Schedules A, D and E of this Article, the Trustee, without any other or further condition precedent, shall certify and deliver upon the order of the Railway Company an amount of refunding bonds equal to the amount of the outstanding old bonds of such issue as extended in Schedules A, D and E of this

Article, except so far as such extended amount may then have been reduced by the issuance of refunding bonds against deposit of such outstanding old bonds with the Trustee, as hereinbefore provided, and except so far as such extended amount may then have been reduced by the issuance of collateral bonds issued to pay or acquire outstanding old bonds of such issue; and from time to time the Railway Company shall take all practicable means to procure, upon terms which it shall deem reasonable, the satisfaction and discharge of all the mortgages securing such outstanding old bonds.

Certification of bonds not needed for refunding purposes.

Any refunding bonds which shall no longer be required to be reserved for issue and delivery in exchange for or to take up at or before maturity the outstanding old bonds, or to acquire the collateral bonds, in accordance with the preceding provisions of this paragraph (2), may be certified and delivered to the Railway Company or upon its order, on filing with the Trustee, from time to time, a copy of a resolution of the board of directors of the Railway Company, certified under its corporate seal by its secretary, requesting such delivery.

The remaining $5,804,000 of bonds.

(3) The remaining $5,804,000 face value of the said bonds shall be certified and delivered for use, in the discretion of the Railway Company, in the purchase and refunding of the outstanding old bonds and the purchase of the collateral bonds to be acquired as aforesaid.

Certification of bonds for refunding purposes.

The bonds so reserved under this subdivision for refunding and purchasing purposes shall be certified and delivered to the Railway Company, or upon its order, on the filing with the Trustee, from time to time, a copy of a resolution of the board of directors of the Railway Company certified under its corporate seal by its secretary, or an assistant secretary, requesting such delivery and stating that the bonds so delivered, or their proceeds, will be used by the Railway Company only for the purposes of such refunding or purchasing.

Certification of bonds not needed for refunding purposes.

Any refunding bonds so reserved under this paragraph (3) which, after January 1, 1920, shall not have

been used for refunding or purchasing the aforesaid indebtedness or, in the judgment of the board of directors of the Railway Company, to be expressed by a resolution of said board, shall no longer be required to be reserved for use for such purposes, may be certified and delivered to the Railway Company or upon its order, on filing with the Trustee, from time to time, a copy of a resolution of the board of directors of the Railway Company, certified under its corporate seal by its secretary, or an assistant secretary, requesting such delivery.

Trustee's liability limited.

(4.) A certificate signed by the president or vice-president of the Railway Company and by its treasurer, as to any facts, matters or conclusions pertinent to the right to certify and deliver refunding bonds, as aforesaid, shall, as regards the Trustee, be conclusive evidence of such facts, matters and conclusions and be full authority for the action of the Trustee in accordance therewith.

Until default Trustee not to collect interest on bonds subject to this indenture.

ARTICLE THIRD.—Unless (1) default shall be made in the payment of interest on any bond hereby secured, and such default shall continue for the period of sixty days; or unless (2) default shall be made in the payment of the principal of any such bond; or unless (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Railway Company and any such last mentioned default shall be continued for the period of sixty days after notice thereof to the Railway Company from the Trustee or the holders of five per cent. or more in amount of the bonds hereby secured and at the time outstanding, and except during the continuance of any such default, the Trustee (except with the assent of the Railway Company, or except in case of the institution of proceedings to foreclose the mortgage securing any outstanding old bonds and with reference to such outstanding old bonds only) shall not collect or be entitled to collect the interest of any bonds subject to the lien of

this indenture, and the Railway Company shall be entitled to receive any interest paid in respect of all such bonds. From time to time, subject to the provisions of this Article, upon the request of the Railway Company, the Trustee shall deliver to it the coupons for interest payable upon all deposited bonds; and the Trustee shall at once pay over to the Railway Company any such interest which may be collected or received by it. The Trustee shall have power, at the request of the Railway Company, to extend the time of payment of any bonds subject hereto, and to consent to a reduction of the rate of interest upon any such bonds, and also to exchange any such bonds for, or, in case of payment of such bonds, to invest the principal thereof in, at least an equal amount face value of other bonds of the same or another company, of a total issue not greater than that of the bonds so exchanged therefor, and secured by a mortgage upon the same line of railroad which shall not be subordinate in lien to any prior mortgage upon such line to which the mortgage securing said bonds so exchanged was not subordinate at the time of the payment or exchange thereof. The Trustee, in its unrestricted discretion, may accept the certificate of the president or a vice-president and another officer of the Railway Company as conclusive evidence of any of the facts, matters or conclusions upon which the power of the Trustee so to extend or exchange bonds or to consent to a reduction of interest or to reinvest the proceeds of bonds depends. Subject to such power of extension, exchange and investment the principal of any bonds collected and received by the Trustee shall be held and disposed of by it, in the same manner as hereinafter in Article Thirteenth of this indenture, provided as to any sums received by the Trustee pursuant to said Article.

In case of default of interest on collateral bonds Trustee to foreclose mortgage securing same.

If any default shall be made in the payment of the principal or interest of any of the collateral bonds at any time subject hereto, or of other bonds secured by the same mortgage as such collateral bonds held by the Trustee, then, in such case, the Trustee, upon the

written request of the Railway Company, and upon being indemnified as hereinafter provided, may cause proper proceedings to be instituted and prosecuted in some court of competent jurisdiction to foreclose the mortgage or mortgages by which such bonds are secured; but in any case where not less than eighty-five per cent. in amount of the principal of all the bonds secured by any mortgage are pledged hereunder, proceedings to foreclose such mortgage shall be taken only under such conditions as in the judgment of the Trustee will enable it either to obtain par and interest for the bonds secured by such mortgage held by it, or else to acquire the property covered by such mortgage and to subject such property, or securities representing such property, to the lien hereof, as hereinafter provided. The Trustee, however, shall not be liable for any error of judgment in respect of such proceedings or their outcome, or for anything omitted or done by its attorneys or counsel in such proceedings, provided such attorneys or counsel shall have been selected with reasonable care. In case the Railway Company shall be in default in the payment of the principal or interest of any of the bonds hereby secured, and such default shall have continued for a period of three months; or in case a receiver of the mortgaged premises shall have been appointed; or in case the Trustee shall have entered, or shall have elected to enter, into possession of the mortgaged premises under the power hereinafter conferred, or by the voluntary action of the Railway Company, then the Trustee, in its discretion, may institute such proceedings without such written request.

Convenant to pay principal and interest.

ARTICLE FOURTH.—The Railway Company agrees and convenants that it will duly and punctually pay or cause to be paid to every holder of any bond issued hereunder and secured hereby the principal and interest accruing thereon, all in gold coin of the United States of America of or equal to the present standard of weight and fineness, at the dates and place and in the manner mentioned in said bond or in the

coupons thereto appertaining, according to the true intent and meaning thereof, without deduction from either principal or interest for any tax or taxes which the Railway Company may be required to pay thereon or retain therefrom under any present or future law of the United States of America, or of any state, county or municipality therein. The interest on coupon bonds shall be payable only on presentation and surrender of the respective coupons annexed to said coupon bonds as such coupons respectively mature; and when and as paid, all coupons shall forthwith be canceled by the Railway Company.

Convenant not to extend interest.

In order to prevent any accumulation after maturity of coupons or claims for interest upon registered bonds, the Railway Company agrees and covenants that it will not, directly or indirectly, extend or assent to the extension of the time for payment of any coupon or claim for interest upon any bonds secured hereby; and that it will not, directly or indirectly, be a party to or approve any such arrangement by purchasing or funding said coupons or claims for interest on registered bonds or in any other manner. In case the time for payment of any such coupon or claim for interest shall be so extended, whether or not such extension be by or with the consent of the Railway Company, such coupon or claim for interest shall not be entitled, in case of default hereunder, to the benefit or security of this indenture, except subject to the prior payment in full of the principal of all bonds issued hereunder then outstanding, and of all matured coupons and claims for interest on such bonds, the payment of which has not been so extended.

Covenant to discharge taxes, etc.

The Railway Company agrees and covenants that it will from time to time duly pay and discharge all taxes, assessments and governmental charges lawfully imposed upon the railroads, franchises, property and premises hereby mortgaged and pledged, or upon any part thereof, or upon the income or profits thereof, the lien of which might or could be held prior or superior to the lien of this indenture, so that the priority of this

indenture shall be fully preserved in respect of all such properties; and that it will also pay and discharge all taxes, assessments and governmental charges lawfully imposed upon the estate of the Trustee, or upon the interest therein of the holder of any bond or bonds or coupons hereby secured; provided, however, that the Railway Company shall not be required to pay any such taxes, assessments or governmental charges so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof.

Covenant to pay principal and interest of outstanding old bonds.

The Railway Company agrees and covenants that it will well and truly pay and discharge the principal and interest of all and singular the said outstanding old bonds hereinbefore in subdivision A of paragraph (2) of Article Second hereof enumerated, at or before their maturity by the terms thereof or of any extension of the time of payment thereof.

Covenant as to leases.

The Railway Company agrees and covenants that it will from time to time punctually observe and perform all of the obligations and pay and discharge all amounts payable under or by virtue of any lease hereby mortgaged, so that the interest of the Railway Company in any such leasehold estate may be at all times preserved unimpaired as security for the bonds issued hereunder; provided, however, that nothing contained in this Article shall require the Railway Company to make any such payments or to observe any such obligations so long as it shall, in good faith and by appropriate legal proceedings, contest its liability therefor.

Covenant to maintain office in New York.

The Railway Company agrees and covenants that it will, at all times until the payment of the principal of the bonds secured by this indenture, either keep an office or agency in the city of New York where bonds and coupons may be presented for payment and where notices or demands in respect of said bonds and coupons may be served, or designate, by written notice to the Trustee and by advertisement, a bank or trust company in said city for such purposes. In default of any such office or agency or any such designation, pres-

entation and demand may be made and notices served at the office of the Morton Trust Company in the city of New York.

Covenant to keep property in repair.

The Railway Company agrees and covenants at all times to maintain, preserve and keep the mortgaged railroad and property and every part thereof, with the rolling stock, fixtures and appurtenances and every part and parcel thereof, whether owned, controlled or leased by it, in thorough repair, working order and condition, and supplied with motive power, rolling stock and equipment, and that it will from time to time make all needful and proper repairs, renewals, replacements, additions, betterments and improvements, so that the traffic and business thereof and of every part thereof shall at all times be conducted with safety and expedition.

Covenant to keep this indenture a first lien subject to existing liens.

The Railway Company agrees and covenants that this indenture is and always will be kept a first lien upon all the premises and property described in the granting clauses hereof, now owned by the Railway Company and upon all property hereafter acquired by it in connection with such premises and property, and upon all renewals and replacements of such property and all additions, switches, side-tracks, betterments and improvements thereto, subject only to existing liens, and that it shall become a first lien upon the payment of the outstanding old bonds, as herein provided ; that it will not create or suffer to be created or

Covenant to discharge claims given priority in law, etc.

to accrue or to exist any lien or charge having priority to or preference over the lien of this indenture upon the mortgaged premises and property, or any part thereof, or upon the income thereof and that it will, within three months after the same shall accrue, pay or cause to be discharged or paid, or will make adequate provision for the satisfaction or discharge of every lawful claim and demand for labor, material, supplies or other objects which, if unpaid, might by law be given precedence to this indenture as a lien or charge upon the mortgaged premises or any part thereof or upon the income thereof ; provided, how-

ever, that it shall not be required to pay any such claims or demands so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof.

Covenant to preserve franchises, etc.

The Railway Company agrees and covenants that it will maintain and preserve all franchises, rights, easements, powers and privileges required or necessary to preserve the continuity of the main lines of railroad subject to this indenture and that it will maintain its corporate existence for all the purposes of this indenture; provided, however, that the Railway Company shall not be required hereunder to maintain or preserve any franchise, right, easement, power or privilege which, in its opinion, it is inadvisable to maintain or preserve, so long as the continuity of the main lines of railroad subject hereto is preserved.

Covenant to deliver pledged shares of stock

The Railway Company agrees and covenants that the shares of stock hereby mortgaged and pledged, excepting shares necessary to qualify directors, shall, whenever and as soon as the lien of the said mortgage dated February 1, 1897, from the Railway Company to the Guaranty Trust Company of New York may be discharged, be duly endorsed in blank and forthwith delivered to the Trustee to be held by it, subject in all respects to the lien and operation of these presents, as security hereunder for the payment of the principal and interest of the bonds intended to be secured hereby. The Trustee may case all shares of stock at any time mortgaged and pledged hereunder to be transferred into its name as Trustee, at the expense of the Railway Company, but the Trustee, in its discretion, in lieu of transferring such shares into its own name, may hold the certificates therefor, endorsed in blank by the registered holder or holders thereof, and may make such other transfers and arrangements as may be required from time to time for the purpose of carrying out the objects of this indenture.

Voting power on pledged shares.

The power to vote upon or consent in respect of any shares of stock that may be deposited, mortgaged and pledged hereunder shall be exercised by the Railway

Company only as herein provided. So long as there shall be no default in the payment of the principal or interest of the bonds hereby secured, the Railway Company shall have power to vote or consent in respect of said shares of stock, personally or by proxy, for any purpose whatsoever, except as herein otherwise provided, as may be directed by resolution of the board of directors of the Railway Company ; and in case any of the said shares shall at any time hereafter be transferred by or on behalf of the Trustee into its own name or unto any person or corporation other than the Railway Company, then the Trustee shall make, sign, seal, execute or procure and deliver such proper proxies or powers of attorney as shall empower and permit the Railway Company, or its substitute or substitutes or designated representative or representatives, at all times (save in case of such default as aforesaid) to vote upon and consent in respect of the said shares of stock. In the event of such default, and during the continuance of the same, such voting power may be exercised by means of proper proxies, which shall be given or procured by the Trustee and delivered to such person or persons as may be designated or appointed by the holders of a majority in interest of the bonds hereby secured and then outstanding, by an instrument or concurrent instruments in writing duly signed by such holders or their authorized agents, as hereinafter provided ; provided, however, that until the holders of a majority in interest of the bonds hereby secured and then outstanding shall make such designation or appointment, the Trustee may exercise the said voting power in its discretion. The Trustee shall be under no obligation to see that said shares of stock are voted in accordance with the covenants of the Railway Company herein contained, whether such shares are voted by the Railway Company or under proxes issued or procured by the Trustee.

Covenant not to sell pledged shares, increase capital stock or create additional indebtedness, etc.

The Railway Company agrees and covenants that it will not sell any of the shares of stock deposited, mortgaged and pledged hereunder ; nor will it, except subject to the prior lien of this mortgage, pledge or

agree to pledge or hypothecate the same, nor by any voluntary act or omission part with the ownership of such stock or any part thereof or with its equity of redemption therein. The certificates for said stock may be deposited hereunder in the name or names of individuals or corporations other than the Railway Company, provided the same be endorsed in blank; but in such case the Railway Company agrees and covenants that it will procure proper proxies securing to it the voting power on such stock when necessary for carrying out the purposes of this indenture and so long as it shall be entitled to vote the same pursuant to the terms hereof, or, if such proxies cannot be secured, the Railway Company shall cause said stock to be transferred into its own name at its own cost and expense of transfer. The certificates for any stock so transferred into the name of the Railway Company shall be endorsed in blank by it, and deposited with the Trustee. The Railway Company further agrees and covenants that as holder of such stock, or of proxies to vote the same, it will not by affirmative vote or by abstaining from voting or in any other manner, directly or indirectly, sanction or permit any increase of the capital stock of any corporations, the shares of which are mortgaged or pledged hereunder, or, except as to issues of bonds, some or all of which are to be exchanged for bonds deposited and pledged hereunder or purchased by the Trustee with the proceeds of such deposited bonds pursuant to the power given to the Trustee by Article Third hereof, sanction or permit, the creation of any indebtedness of any of said corporations for money borrowed, or the the issue of any bonds by any of said corporations or the creation of any mortgage or other lien upon any of their railroads, properties, rights, privileges or franchises, beyond or in addition to the bonds, debts, or obligations of said corporations, respectively, authorized to be issued under any mortgage or deed of trust existing at the date hereof.

Dividends on pledged shares.

So long as there shall be no default in the payment of the principal or interest of the bonds hereby secured, the Railway Company shall be entitled to collect and receive all dividends and increase payable upon any shares of stock deposited, mortgaged and pledged hereunder; and any such dividends or increase, which may be collected by the Trustee, shall, as the same are collected by it, be paid over to the Railway Company or upon its order for its own use. In the event of any such default, and during the continuance of the same, all such dividends and increase shall be collected by the Trustee and may be by it applied to the payment of the interest upon the bonds hereby secured as it accrues, or to make or reimburse any expenditure of the Trustee authorized under this indenture.

Stock dividends on pledged shares.

Any and all stock dividends which may be declared and which may become payable upon any such shares of stock deposited with and held by the Trustee hereunder, shall be transferred and delivered to the Trustee, and shall be by it held as further security for the benefit of the holders of the bonds hereby secured, with the same effect and subject to all the conditions and provisions hereof as if originally pledged hereunder. Any and all additional shares of stock so received and pledged shall be fully paid and non-assessable.

Pledge of shares not to prevent consolidation, merger or sale.

The assignment, transfer and pledge hereunder of any such shares of stock shall not prevent the consolidation or merger with the Railway Company or with one another of any corporations the shares of which are so assigned, transferred or pledged, or the sale or transfer by any such corporation of its railroads, properties, rights, privileges and franchises to the Railway Company or to another of said corporations; but such consolidation, merger or transfer may be made under any existing or future law, anything in this indenture contained to the contrary notwithstanding; provided that such consolidation, merger or transfer shall be made only upon such terms and at such times and in

such manner as not to impair the lien of this indenture or the security for the bonds issued hereunder.

A certificate signed by the president or one of the vice-presidents of the Railway Company may be received by the Trustee as conclusive evidence of any of the facts, matters or conclusions mentioned or referred to in this Article, and shall be full warrant, direction or justification to the Trustee for its action on the faith thereof in respect of any of the provisions of this Article.

Trustee's right of entry in case of default.

ARTICLE FIFTH.—In case (1) default shall be made in the payment of any interest on any bond hereby secured and any such default shall continue for a period of three months; or in case (2) default shall be made in the payment of the principal of any such bond; or in case (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Railway Company, and any such last-mentioned default shall continue for a period of sixty days after written notice thereof to the Railway Company from the Trustee or from the holders of five per cent. or more in amount of the bonds hereby secured and at the time outstanding; then, and in each and every such case, the Trustee, either personally or by its agents or attorneys, may, either upon its own motion or upon the written request of the holders of twenty-five per cent. in amount of the bonds hereby secured then outstanding, forthwith enter into and upon all or any part of the railroads, rolling stock, property, lands, leaseholds, rights, interests, franchises and premises, and the income thereof, hereby conveyed or intended so to be, and each and every part thereof, and may exclude the Railway Company and its agents and servants wholly therefrom; and, having and holding the same, may use, operate, manage and control said railroads and other premises, regulate the tolls for the transportation of passengers and freight thereon, and conduct the business thereof, either personally or by superintendents, managers, re-

Right to manage and operate.

ceivers, agents, servants or attorneys, to the best advantage of the holders of the bonds hereby secured, to the fullest extent authorized by law. Upon every such entry the Trustee may from time to time at the expense of the trust estate, either by purchase, repair or construction, maintain and restore and insure or keep insured, in the same manner and to the same extent as is usual with street railroad companies, the rolling stock, tools, machinery and other property, buildings, bridges and other structures erected or provided for use in connection with said railroads and other premises, or any part thereof, and of which it shall become possessed as aforesaid; and likewise may from time to time, at the expense of the trust estate, make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments and improvements thereto and thereon as to it may seem judicious. The Trustee, in case of such entry, shall have the right to manage the mortgaged railroads and premises and to carry on the business and to exercise all the rights and powers of the Railway Company, either in the name of the Railway Company or otherwise, as the Trustee shall deem best. It shall be entitled to collect and receive all tolls, earnings, incomes, rents, issues and profits of the mortgaged railroads and premises and every part thereof. After deducting the expenses of operating said railroads and other premises, and of conducting the business thereof and of all repairs, maintenance, renewals, replacements, alterations, additions, betterments and improvements, and all payments which may be made for taxes, assessments, insurance and prior or other proper charges upon the said railroads, premises or property or any part thereof, as well as just and reasonable compensation for its own services and for the services of all counsel, agents and employees by it properly engaged and employed, it shall apply the moneys arising as aforesaid as follows:

Application of income by Trustee in possession.

First.—In case the principal of the bonds hereby secured shall not have become due, to the payment

— before principal due.

of the interest in default in the order of the maturity of the installments of such interest, with interest thereon, at the rate of interest which the refunding bonds shall respectively carry, such payments to be made ratably to the persons entitled thereto without any discrimination or preference;

Second.—In case the principal of the bonds hereby secured shall have become due, by declaration or otherwise, first to the payment of the accrued interest (with interest at the rate aforesaid on the overdue installments thereof) in the order of maturity of the installments, and next, if any surplus remain, towards the payment of the principal of all bonds hereby secured; such payments in every instance to be made ratably to the persons entitled thereto, without any discrimination or preference. — after principal due.

Upon the payment in full of whatever may be due for principal and interest, or payable for other purposes, the premises shall be returned to the Railway Company, its successors or assigns or to whosoever may be lawfully entitled thereto. Return of property.

In case the Railway Company shall make default in any of the respects mentioned in this Article, and at any time during the continuance of such default there shall be any existing judgment against the Railway Company unsatisfied and unsecured by bond on appeal, or in case, in any judicial proceeding by any party other than the Trustee, a receiver shall be appointed of the Railway Company, or a judgment or order entered for the sequestration of its property, the Trustee shall be entitled forthwith to exercise the right of entry herein conferred, without waiting said prescribed default period, and also any and all other rights and powers herein conferred and provided to be exercised by the Trustee upon the occurrence and continuance of default as hereinbefore provided; and, as matter of right, the Trustee shall thereupon be entitled to the appointment of a receiver of the railroads, property and premises hereby mortgaged and pledged and of the tolls, earnings, income, rents, issues and profits Trustee's right to proceed in certain cases before expiration of default period, etc.

thereof, with such powers as the court making such appointment shall confer.

Trustee's right to declare principal due in case of default.

ARTICLE SIXTH.—In case default shall be made in the payment of any interest on any bond hereby secured, and any such default shall continue for a period of three months, the Trustee may, and upon the written request of the holders of a majority in amount of the bonds hereby secured then outstanding, shall, by notice in writing delivered to the Railway Company, declare the principal of all bonds hereby secured then outstanding to be due and payable immediately; and, upon any such declaration, the same shall become and be immediately due and payable, anything in this indenture or in said bonds contained to the contrary notwithstanding. This provision is, however, subject to the condition that if at any time after the principal of said bonds shall have been so declared due and payable all arrears of interest upon such bonds (with interest on the overdue installments of interest at the rate which the refunding bonds shall respectively carry) and the expenses of the Trustee shall be paid by the Railway Company or be collected out of the mortgaged premises before any sale of the mortgaged premises shall have been made, then and in every such case the holders of a majority in amount of the bonds hereby secured then outstanding, by written notice to the Railway Company and to the Trustee, may waive such default and its consequences, and obtain from the Trustee a rescission of such declaration of the maturity of the principal; but no such waiver shall extend to or affect any subsequent default, or impair any right consequent thereon.

Waiver of default.

Trustee's right to sell in case of default.

ARTICLE SEVENTH.—In case (1) default shall be made in the payment of any interest on any bond hereby secured, and any such default shall continue for a period of three months; or in case (2) default shall be made in the payment of the principal of any such bond; or in case (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by

the Railway Company, and any such last mentioned default shall continue for a period of three months after written notice thereof from the Trustee or from the holders of five per cent. or more in amount of the outstanding bonds hereby secured; then, and in each and every such case, the Trustee shall, in its discretion, be forthwith entitled, with or without entry, either personally or by its agent or attorney, to sell to the highest and best bidder in one lot and as an entirety all and singular the mortgaged railroads and premises, leases, rights, franchises and interests, and shares of stock and bonds, and all right, title and interest, claim and demand therein and thereto, and right of redemption thereof. Such sale shall be at public auction in the City of New York, and at such time and upon such terms as the Trustee may fix, but this power of sale, as well as all other powers granted or conferred by this indenture, shall be exercised only so far as may be authorized by law. In case such power of sale be so exercised, the Railway Company shall join in any deed of conveyance or other writing evidencing such sale.

Trustee's right to institute legal proceedings in case of default.

ARTICLE EIGHTH.—In case (1) default shall be made in the payment of any interest on any bond hereby secured or in the payment of the principal of any such bond, or in case (2) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Railway Company, and any such last-mentioned default shall continue for a period of sixty days after written notice thereof to the Railway Company from the Trustee or from the holders of five per cent. or more in amount of the outstanding bonds hereby secured, then, and in each and every such case, the Trustee may forthwith proceed to protect and enforce its rights and the rights of bondholders under this indenture by a suit or suits in equity or at law, either for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure of

this indenture for any default, or for the collection of interest or of principal and interest, or both, or for the enforcement of any other appropriate legal or equitable remedy, as the Trustee shall deem most effectual in support of any of its rights or duties hereunder.

Judicial proceedings and appointment of receiver.

ARTICLE NINTH.—Upon filing a bill in equity or upon other commencement of judicial proceedings by the Trustee to enforce any right under this indenture, this Trustee shall be entitled to exercise the right of entry herein conferred and also any and all rights and powers herein conferred and provided to be exercised by the Trustee upon the occurrence and continuance of any default as hereinbefore provided; and, as matter of right, the Trustee shall be entitled to the appointment of a receiver of the railroads, property and premises hereby mortgaged and pledged, and of the tolls, earnings, revenue, rents, issues, profits and other income thereof, with such powers as the court or courts making such appointment shall confer.

Remedies cumulative.

No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other remedy, but every remedy herein provided shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, or by statute; and every power and remedy given by this indenture to the Trustee or to the bondholders may be exercised from time to time and as often as may be deemed expedient.

Trustee's delay or omission not to impair rights hereunder.

No delay or omission of the Trustee or of any holder of bonds hereby secured to exercise any right or power arising from any default shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein. In case the Trustee shall have proceeded to enforce any right under this indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned because of waiver or for any other reason, or shall have been determined adversely to the Trustee, then, and in every such case, the Railway Company and the Trustee shall severally and respectively be restored to their former

position and rights hereunder in respect of the mortgaged premises, and all rights, remedies and powers of the Trustee shall continue as though no such proceedings had been taken.

In case of sale, property to be sold in one parcel, unless otherwise requested by holders of majority of bonds.

ARTICLE TENTH.—In the event of any sale under or by virtue of the power of sale herein contained or pursuant to judicial proceedings, the whole of the property and premises hereby mortgaged may be sold in one parcel and as an entirety, including all the rights, titles, estates, railroads, leaseholds, equipment, franchises, contracts, shares of stock, bonds and other real and personal property of every name and nature, unless such sale as an entirety be impracticable by reason of some statute or other cause, or unless the holders of a majority in amount of the bonds hereby secured then outstanding shall in writing request the Trustee to cause said property and premises to be sold in parcels, in which case the sale shall be made in such parcels as may be specified in such request; and this provision shall bind the parties hereto and each and every of the holders of the bonds and coupons hereby secured or intended so to be. Notice of any such sale shall state the time when and the place where the same is to be made, and shall contain a brief general description of the property to be sold, and shall be published once in each week for four successive weeks prior to such sale in two daily newspapers published in the City of New York, and such notice shall also comply with any requirement of statute or rule or order of court. The Trustee may adjourn any such sale or cause the same to be adjourned from time to time by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, without further notice or publication, such sale may be made at the time and place to which the same shall be so adjourned. In case of such sale of the mortgaged property and premises, the whole of the principal sum of the bonds hereby secured, if not previously due, shall, at the option of the Trustee or of the holders of a majority of the

Notice of sale.

Principal to become due in case of sale.

bonds hereby secured then outstanding, become immediately due and payable, anything in said bonds or in this indenture contained to the contrary notwithstanding.

Conveyance to purchaser at sale.

Upon the completion of any sale or sales made by the Trustee hereunder, the Trustee shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed or deeds of conveyance, sale and transfer of its right, title and interest in and to the property and franchises sold, or shall execute and deliver, in conjunction with the deed or deeds of the court officer conducting such sale, a proper release of such property and franchises. The Trustee and its successor or successors are hereby appointed the true and lawful attorney or attorneys irrevocable of the Railway Company, in its name and stead to make all necessary deeds of conveyance, sale and transfer of such property and franchises, and for that purpose the Trustee may execute all necessary acts of conveyance, assignment and transfer, and may substitute one or more persons or corporations with like power, the Railway Company hereby ratifying and confirming all that its said attorney or attorneys, or such substitute or substitutes, shall lawfully do by virtue hereof. Nevertheless, the Railway Company shall, if so requested by the Trustee, ratify and confirm such sale by executing and delivering to the Trustee or to such purchaser or purchasers all proper deeds, conveyances, transfers, assignments and releases, as may be designated in such request. Any such sale or sales made under or by virtue of this indenture, either under the power of sale hereby granted and conferred or under or by virtue of judicial proceedings, shall divest all right, title, interest, estate, claim and demand whatsoever, either at law or in equity, of the Railway Company of, in and to the property and premises sold, and shall be a perpetual bar both at law and in equity against the Railway Company, its successors and assigns, and against any and all persons claiming or to claim the property or premises sold or any part

thereof from, through or under the Railway Company, its successors or assigns.

ARTICLE ELEVENTH.—In case of any sale of the mortgaged premises and property, whether under the power of sale hereby granted or pursuant to judicial proceedings, the purchase money, proceeds or avails, together with any other sums which may then be held by the Trustee or be payable to it under any of the provisions of this indenture as part of the trust estate, shall be applied as follows : Application of proceeds of sale—

First.—To the payment of the costs, expenses, fees and other charges of such sale, and a reasonable compensation to the Trustee, its agents and attorneys, and to the payment of all expenses and liabilities incurred and advances or disbursements made by the Trustee, and to the payment of all taxes, assessments or liens prior to the lien of these presents, except any taxes, assessments or other superior liens subject to which such sale shall have been made. —first, to payment of expenses, etc. ;

Second.—Any surplus then remaining, to the payment of the whole amount owing or unpaid upon the principal and interest of the bonds hereby secured, with interest on the overdue installments of interest at the rate which the refunding bonds shall respectively carry ; and, in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the said bonds, then to the payment of such principal and interest ratably, according to the aggregate of such principal and the accrued and unpaid interest, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest. —second, to payment of principal and interest ;

Third.—Any surplus then remaining to the Railway Company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same. —third, surplus to Railway Company.

In case of sale of the mortgaged property and premises or any part thereof, either by the Trustee, or pursuant to judicial decree, the purchaser, for the purpose of making settlement or paymant for the prop- Purchaser may apply bonds, etc., on purchase price.

erty and premises purchased, shall be entitled to turn in or apply towards the payment of the purchase price any bonds issued hereunder and any matured and unpaid interest or coupons, and to be credited therefor to the extent of the value of such bonds, interest and coupons upon a distribution among the bondholders of the net proceeds of such sale, after making the deductions allowable under the terms hereof for the costs and expenses of the sale and otherwise. But such bonds, interest and coupons so applied in payment by the purchaser shall be deemed to be paid only to the extent so applied and credited. At any such sale, the Trustee or any bondholders or their agents may bid for and purchase such property and premises and may make payment therefor as aforesaid, and, upon compliance with the terms of sale, may hold, retain and dispose of such property and premises without further accountability. The receipt of the Trustee or of the court officer conducting such sale shall be a sufficient discharge for the purchase money to any purchaser of the property or premises, or any part thereof sold as aforesaid; and no such purchaser, or his representatives, grantees or assigns, after paying such purchase money and receiving such receipt shall be bound to see to the application of such purchase money upon or for any trust or purpose of this indenture, or be answerable in any manner whatsoever for any loss, misapplication or non-application of any such purchase money or any part thereof.

Receipt for purchase price.

Covenant to pay principal and interest to Trustee in case of default.

ARTICLE TWELFTH.—The Railway Company agrees and covenants that in case (1) default shall be made in the payment of any interest on any bonds hereby secured and such default shall continue for a period of three months; or in case (2) default shall be made in the payment of the principal of any such bonds when the same shall become payable, whether at the maturity of said bonds or by declaration as authorized by this indenture or by a sale of the mortgaged premises and property as hereinbefore provided; then, upon demand of the Trustee, it will pay

to the Trustee for the benefit of the holders of the bonds and coupons hereby secured and then outstanding, the whole amount due and payable on all such bonds and coupons for principal or interest or both, as the case may be, with interest upon the overdue principal and installments of interest ; and, in case the Railway Company shall fail to pay the same forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled to recover judgment against the Railway Company for the whole amount so due and unpaid. The Trustee shall be entitled to recover judgment as aforesaid either before or after or during the pendency of any proceedings for the enforcement of the lien of this indenture upon the mortgaged premises and property, and its right to recover such judgment shall not be effected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this indenture, or by the foreclosure of the lien hereof ; and, in case of a sale of the mortgaged premises and property and of the application of the proceeds of sale to the payment of the mortgage debt, either under any power hereby granted, or under judicial decree, the Trustee, in its own name and as trustee of an express trust, shall be entitled to receive and to enforce payment of any and all deficiency or amounts then remaining due and unpaid upon any or all of the bonds issued hereunder and then outstanding for the benefit of the holders thereof, and shall be entitled to recover judgment against the Railway Company for any portion of the mortgage debt remaining unpaid, with interest. No recovery of any judgment by the Trustee and no levy of any execution under any such judgment upon property subject to the lien of this indenture, or this indenture, or upon other property, shall, in any manner or to any extent, affect or impair the lien of the Trustee upon the mortgaged premises and property or any part thereof, or any rights, powers or remedies of the Trustee hereunder or any rights, powers or reme-

—suit therefor.

dies of the holders of the bonds hereby secured ; but such lien, rights, powers and remedies shall continue unaffected and unimpaired as before, except as against the purchaser of the mortgage premises and property at any sale made by the Trustee or under judicial decree. Any moneys thus collected by the Trustee under this Article shall be applied by the Trustee, first to the payment, at the option of the Trustee, of the costs and expenses of the proceedings resulting in the collection of such moneys, and to the payment of reasonable compensation to the Trustee for any and all services hereunder, and of the expenses paid or incurred by the Trustee in theretofore managing and maintaining the property and premises hereby conveyed ; and, second, toward payment of the amounts then due and unpaid upon such bonds or coupons respectively, without any preference or priority of any kind, but ratably according to the amounts due and payable upon such bonds and coupons respectively, at the date fixed by the Trustee for the distribution of such moneys.

—application of amount recovered.

ARTICLE THIRTEENTH.—Upon the written request of the Railway Company, approved by resolution of its board of directors, the Trustee may from time to time, so long as the Trustee shall not have taken possession of the mortgage premises and property, release from the lien and operation of this indenture any part of the mortgaged premises and property then subject thereto ; provided that no part of the lines of track or of the rights of way shall be released unless at the time of such release the same shall no longer be of use in the operation of any of the mortgaged lines of railroad ; and provided further that no part of the mortgage premises or property shall be released hereunder unless at the time of such release it shall no longer be necessary or expedient to retain the same for the operation, maintenance or use of such railroads or for use in the business of the Railway Company. No such release shall be made unless the property so to be released shall have been sold, or the sale

Release of property no longer of use to Railway Company.

or exchange of the same for other property shall have been contracted. The Trustee may, upon like request, and so long as there shall not be a default (of which the Trustee shall have received written notice) in the payment of any interest on, or principal of, any of the bonds hereby secured, release from the lien and operation of this indenture any of the shares of stock or bonds mortgaged and deposited and to be deposited hereunder upon the deposit with the Trustee of a sum in cash equal to the value of the shares of stock or bonds so released, as determined by an appraiser or appraisers appointed by the Railway Company and approved by the Trustee. The proceeds of any and all such sales of any part of the mortgaged premises and property, and all moneys received as compensation for any property subject to this indenture taken by exercise of the power of eminent domain, and any sums in cash so deposited upon the release of mortgaged shares of stock or bonds shall be applied to the purchase of other property, real or personal, for the benent of the Railway Company, which shall be subjected to the lien of this indenture, or in additions, betterments or improvements to the mortgaged premises or rolling stock for use thereon. which shall likewise be subjected to the lien of this indenture. Any such purchases shall be made or directed by the Railway Company and payment therefor shall be made by tha Trustee to the Railway Company, or upon its order, out of such proceeds in pursuance of the written request of the Railway Company expressed over the signature of its president or one of its vice-presidents by order of its board of directors, which request shall constitute a sufficient warrant, direction or justification to the Trustee for the payment of the money. Or, if not so applied, then said proceeds may be used for the purchase of bonds issued hereunder at a price satisfactory to the Trustee and the Railway Company ; but, if said bonds cannot be so purchased, then such funds may be invested by the Trustee in such securities as are, or may from time to time be, author-

Proceeds of sale of property released.

ized by law in the State of New York for the investment of trust funds. Any securities so purchased by the Trustee shall be held by it as security for the further protection of the bonds issued hereunder, and subject to the lien, terms, covenants and provisions of this indenture; and such securities or any of them may be sold by the Trustee and the proceeds thereof may be invested in other like securities or may be disposed of in any other manner hereinbefore authorized with respect to the proceeds of property released from the lien hereof. So long as there shall be no default on the part of the Railway Company of which the Trustee shall have written notice, the interest paid upon said securities shall be paid to the Railway Company. Any new property acquired by the Railway Company to take the place of any property released hereunder, *ipso facto*, shall forthwith, and without further conveyance, become and be subject to the lien of this indenture as fully as if specifically described herein and mortgaged hereby; but, if requested by the Trustee, the Railway Company shall convey the same to the Trustee by appropriate deed or deeds upon the trusts and for the purposes of this indenture. The Railway Company may from time to time make changes or alterations in or substitutions of any and all leases or trackage rights; but in any such event any modified, altered or substituted leases or trackage rights shall forthwith become bound by and be subject to the terms of this indenture in the same manner as those previously existing. The Railway Company, while in possession of the mortgaged premises, shall also have full power, from time to time, in its discretion, and without interference by the Trustee, to dispose of any portion of the equipment, machinery, tools and implements at any time held subject to the lien of this indenture, which may have become obsolete or otherwise unfit for such use; and the Railway Company agrees to replace the same by new equipment, machinery, tools or implements, which shall

Newly acquired property to be subject to the lien hereof.

Release of equipment, etc., no longer of use.

without further conveyance be and become subject to the lien of this indenture. The Railway Company may, in its discretion, change its motive power or that of any line leased or operated by it, and, in its discretion, when duly authorized by law, substitute such motive power as in its judgment shall be for the interest of the property. The substituted motive power and plant connected therewith shall forthwith become subject to the lien of this indenture. If the Trustee shall be in possession of the mortgaged premises under any provision of this indenture, then all the powers conferred upon and reserved to the Railway Company by this Article may be exercised by the Trustee in its discretion; and if the mortgaged premises shall be in the possession of a receiver lawfully appointed, then said powers may be exercised by such receiver with the approval of the Trustee. A certificate signed by the president or one of the vice presidents of the Railway Company may be received by the Trustee as conclusive evidence of any of the facts, matters or conclusions mentioned in this Article required to be established in order to authorize the release of any property hereunder, and shall be full warrant, direction or justification to the Trustee for its action on the faith thereof.

Surrender of possession of real estate of leased railroad companies.

The Railway Company may, without any right of interference by the Trustee, surrender possession of any parcels of real estate belonging to any railroad company which has leased its railroad to the Railway Company as hereinbefore recited; provided that in the judgment of the president or vice president and secretary or treasurer of the Railway Company it shall be inadvisable to retain possession thereof.

Covenant as to insurance moneys.

ARTICLE FOURTEENTH.—In case the Railway Company shall receive any insurance moneys upon any policy of insurance against fire upon any property hereby mortgaged the Railway Company shall expend the same in the construction of buildings, equipment or other property which shall be upon or connected with the property hereby mortgaged, and be subject to

the lien and provision of this indenture; but the Trustee shall not be under any duty to see to the application of such insurance moneys.

Duty of Trustee on default.

ARTICLE FIFTEENTH.—In case of any default as aforesaid, it shall be the duty of the Trustee, upon the written request of the holders of twenty-five per cent. in amount of the bonds hereby secured then outstanding and upon being indemnified as herein provided, to exercise the powers of entry or sale herein conferred, or to commence appropriate judicial proceedings by action, suit or otherwise, or to take such other needful steps for the protection and enforcement of its rights and the rights of the holders of the bonds hereby secured, as the Trustee shall deem most expedient in the interest of the holders of the bonds hereby secured.

Right of holders of majority of bonds to direct Trustee's action.

Anything in this indenture contained to the contrary notwithstanding, the holders of a majority in amount of the bonds hereby secured then outstanding shall have the right from time to time, if they so elect and manifest such election by an instrument or concurrent instruments in writing executed and delivered to the Trustee, to direct and control the method and place of conducting any and all proceedings for any sale of the premises hereby mortgaged and pledged, or for the foreclosure of this indenture, or for the appointment of a receiver; provided, however, that the Trustee shall have the right to refuse to comply with any direction or order of bondholders under this paragraph if in its judgment or in the judgment of its counsel a compliance therewith would be unjustly prejudicial to non-assenting bondholders.

Protection to Trustee.

In all matters of judgment, discretion or policy arising hereunder, including proceedings for any sale of the premises hereby mortgaged and pledged, or for the foreclosure of this indenture, or for the appointment of a receiver, or in any other action or proceeding hereunder, the Trustee shall be fully justified and protected in acting in conformity with any request of the holders of a majority in amount of the bonds hereby secured,

then outstanding, manifested by an instrument or concurrent instruments in writing executed and delivered by such majority of bondholders to the Trustee.

Immunity of Trustee.

The Trustee shall not be concerned with or accountable for the use of any bond hereunder delivered to the Railway Company, or the application of the proceeds of any such bond. The Trustee shall incur no liability to anybody in acting in good faith upon any notice, request, consent, resolution, certificate, bond, document or paper purporting to be genuine and to have been signed by the proper person and believed by the Trustee, after due examination, to be genuine and to have been signed by the proper person. The Trustee, save for its willful default, or for its gross negligence, shall not be personally liable to anybody. The Trustee shall not be responsible for the recording, registration, filing or refiling of this instrument or any instrument of further assurance or for the giving of any notice of the same, or for the affixing or cancellation of any revenue stamps or for the estimation or payment of any taxes; and the Trustee may select and employ in and about the execution of any of the duties incumbent upon it hereunder suitable agents and attorneys, and for their acts and neglects, if selected with reasonable care, the Trustee shall be in no wise responsible.

Requests to and indemnity of Trustee.

The Trustee shall be under no obligation or duty to perform any act hereunder or to defend any suit in respect hereof, except upon request in writing by the holders of at least five per cent. in amount of the bonds hereby secured then outstanding, nor unless first satisfactorily indemnified, nor unless satisfactory provision is made for furnishing additional indemnity from time to time as in the judgment of the Trustee may be required for its protection; nor shall the Trustee be chargeable with notice of any default on the part of the Railway Company except upon delivery to it of a distinct specification in writing of such default by the holders of at least five per cent. in amount of the bonds hereby secured then outstanding, the ownership of whose bonds, if required, must be proved to the

reasonable satisfaction of the Trustee. Any action taken by the Trustee upon the request of any person who at the time is the owner of any bond or bonds or coupons secured hereby, shall be conclusive and binding upon all future owners of the same bond or bonds and coupon or coupons. The Trustee shall not be bound to recognize any person as a bondholder unless nor until his bonds are submitted to the Trustee for inspection, if required, and his title satisfactorily established, if disputed. The recitals and statements herein and in said bonds and coupons contained shall be taken as statements by the Railway Company and shall not be considered as made by or as imposing any obligation or liability upon the Trustee. Any money received by the Trustee under any provision of this indenture may be treated by it, till it is required to pay out the same conformably herewith, as a general deposit, without any liability for interest save such as, during that time, it allows to its general depositors.

Trustee's compensation.

The Railway Company agrees, from time to time, on demand, to pay to the Trustee reasonable compensation for its services hereunder; also to make reimbursement to the Trustee for all counsel fees, compensation of attorneys and agents and other expenditures made by the Trustee hereunder, with interest thereon; also to indemnify and save the Trustee harmless against any and all liabilities of any kind which the Trustee may incur in the exercise and performance of its powers and duties hereunder; and for such indemnification, reimbursement and payment of Trustee's compensation a first lien is hereby imposed in favor of the Trustee upon all the property and funds hereby mortgaged and pledged.

Further immunity of Trustee.

The Trustee shall be under no obligation to see to the delivery to it of the stocks or other personal property intended to be mortgaged or pledged hereunder. It shall be no part of the duty of the Trustee to see to the insurance of any part of the property hereby mortgaged or pledged, or itself to effect such insurance. The Trustee may become the owner of bonds and cou-

pons secured hereby with the same rights which it would have if it were not Trustee. The Trustee may, in its discretion, advise with legal counsel to be selected and employed by it at the expense of the Railway Company, and anything done or suffered in good faith by the Trustee in accordance with the opinion of counsel shall be conclusive in favor of the Trustee on the Railway Company and on all holders of bonds and coupons secured hereby. Counsel for Trustee.

The duties of the Trustee to the Railway Company and to the holders of the bonds and coupons secured hereby shall be determined solely by the provisions of this instrument and by the laws of the State of New York.

The trust estate, property and funds, shall be primarily liable to third persons for all debts contracted by the Trustee and for all damages to persons or property injured and for salaries and for non-performance of contracts and for all other torts, obligations and liabilities arising during any period wherein the Trustee shall manage the trust property or any of it, upon entry as aforesaid, or otherwise ; and the Trustee shall not be personally liable in respect of any such matters. It shall be no part of the duty of the Trustee to see that any of the property intended to be mortgaged or pledged hereunder, or any property hereafter acquired by the Railway Company or released from the lien of any mortgage securing outstanding old bonds or collateral bonds, is properly and legally subjected to the lien hereof ; and in executing this indenture the Trustee makes no covenant or representation as to the title or interest of the Railway Company in or to the property described herein. Further immunity of Trustee.

ARTICLE SIXTEENTH.—No holder of any bond or coupon hereby secured shall have the right to institute any suit, action or proceeding at law or in equity upon or in respect of this indenture, or for the execution of any trust or power hereby created ; or for the appointment of a receiver, or for any other remedy under or upon this indenture, unless such holder shall No suit by bondholders permitted without prior request and indemnity to Trustee.

previously have given to the Trustee written notice of any existing default and of the continuance thereof as hereinbefore provided ; nor unless also the holders of ten per cent. in amount of the bonds hereby secured then outstanding shall have made written request upon the Trustee and shall have afforded to it reasonable opportunity either to proceed itself to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name ; nor unless also such holder or holders shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred in or by reason of such action, suit or proceeding, and the Trustee shall have refused or neglected to comply with such request within a reasonable time thereafter ; and such notification, request and offer of indemnity are hereby declared, in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this indenture and to any action or cause of action for foreclosure or for the appointment of a receiver, or for any other remedy hereunder ; it being understood and intended that no one or more holders of bonds or coupons shall have any right in any manner whatever to affect, disturb or prejudice the lien of this indenture by his or their action, or to enforce any right hereunder, except in the manner herein provided, and that all proceedings hereunder shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all the holders of such outstanding bonds and coupons.

Resignation of Trustee.

ARTICLE SEVENTEENTH.—The Trustee, or any trustee hereafter appointed, may resign and be discharged from the trusts created by this indenture, by giving notice of such resignation to the Railway Company and also to the bondholders, by publication at least twice a week for four successive weeks in two daily newspapers published in the City of New York, and by due execution of the conveyance herein required.

Removal of Trustee.

The Trustee may be removed at any time by an instru-

ment in writing executed by the holders of seventy-five per cent. in amount of the bonds hereby secured then outstanding; but no such removal shall be made before default hereunder without the written consent of the Railway Company. In case the Trustee, or any trustee hereafter appointed, shall at any time resign or be removed or otherwise become incapable of acting, a successor or successors may be appointed by the holders of a majority in amount of the bonds hereby secured then outstanding, by an instrument or concurrent instruments or counterparts signed by such bondholders or their attorneys in fact duly authorized; provided, nevertheless, and it is hereby agreed and declared that in case there shall at any time be a vacancy in the office of Trustee hereunder, the Railway Company may by an instrument executed by order of its board of directors appoint a trustee to fill such vacancy until a new trustee shall be appointed by the bondholders as herein authorized. The Railway Company shall thereupon publish notice of such appointment by it once a week for four successive weeks in two daily newspapers published in the City of New York; but any new trustee so appointed by the Railway Company shall immediately and without further act be superseded by a trustee appointed in the manner above provided by the holders of a majority in amount of the bonds hereby secured, if such appointment be made by the bondholders within six months after the first publication of such last mentioned notice; otherwise the trustee so appointed by the Railway Company shall continue to act hereunder. Every such new trustee appointed in place of the Trustee, or its successor in the trust, shall always be a trust company in good standing authorized to accept such trust and doing business in the City of New York, and having a capital and surplus aggregating at least $1,000,000, if there be such a trust company willing and able to accept the trust upon reasonable or customary terms. Any such new trustee appointed hereunder shall execute, acknowledge and deliver to

Appointment of successor Trustee.

New trustee to be a trust company.

Acceptance of trust vesting mortgaged property in new Trustee.

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the Railway Company an instrument accepting such appointment hereunder, and thereupon such new trustee shall, without further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of its predecessor in the trust hereunder with like effect as if originally named as trustee herein ; but the Trustee retiring shall nevertheless, on the written demand of the new trustee, execute and deliver an instrument conveying and transferring to such new trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the trustee so retiring, and shall duly assign, transfer and deliver to the new trustee so appointed in its place all properties and moneys held by it under this indenture, subject, nevertheless, to the retiring trustee's first lien on all the mortgaged and pledged properties and moneys for its reasonable compensation and reimbursement of all its costs and expenses hereunder. Should any deed, conveyance or instrument in writing from the Railway Company be required by any new trustee for more fully and certainly vesting in and confirming to it the said estates, properties, rights, powers, trusts and duties, then any and all such deeds, conveyances and instruments in writing shall, on request of such new trustee, be made, executed, acknowledged and delivered by the Railway Company.

Possession of premises until default.

ARTICLE EIGHTEENTH.—Until default shall have been made in the due and punctual payment of the interest or principal of the bonds hereby secured, or of some part thereof, or in the due and punctual performance and observance of some covenant or condition hereof obligatory upon the Railway Company, and until such default shall have continued beyond the period of grace, if any, herein provided in respect thereof, the Railway Company, its successors and assigns, shall be suffered and permitted to retain actual possession of all the railroad property and premises hereby mortgaged except the shares of stocks and bonds hereinbefore mortgaged and pledged, and to manage, operate and use the same and every part thereof, with the

rights and franchises appertaining thereto and the business thereof, and to collect, receive and take the tolls, earnings, rents, issues, profits and other income thereof; but the Railway Company hereby agrees and covenants that such income, after paying the expenses of operating said railroads and taxes and rentals thereon, and interest due and payable upon any outstanding underlying bonds, shall be first applied to the payment of the interest accruing and maturing upon the bonds issued hereunder and secured hereby. Application of income.

Nothing contained in this indenture, or in any bond hereby secured, shall prevent any consolidation or merger with or sale to the Railway Company of the railroad and property of any other corporation or any consolidation or merger of the Railway Company with any other corporation, or any conveyance, transfer or lease, subject to the continuing lien of this indenture and to all the provisions thereof, of all the mortgaged premises to any railroad corporation lawfully entitled to acquire the same; provided, however, that such consolidation, merger, conveyance, transfer or lease shall be upon such terms as to fully preserve and not impair the lien and security of this indenture, or any of the rights or powers of the Trustee or of the bondholders hereunder. Consolidation, etc., not prohibited.

ARTICLE NINETEENTH.—If, when the bonds hereby secured shall have become due and payable, the Railway Company shall well and truly pay or cause to be paid the whole amount of the principal and interest due upon all of the bonds hereby secured then outstanding, or shall provide for such payment by depositing with the Trustee hereunder, for the payment of such bonds and interest thereon, the entire amount due for principal and interest, and shall also pay or cause to be paid all other sums payable hereunder by the Railway Company, and shall well and truly keep, perform and observe all the things herein required to be kept, performed and observed by it according to the true intent and meaning of this indenture, then and in that case the premises and property hereby conveyed and all rights and interest therein and thereto shall revert Defeasance.

to the Railway Company, or to whosoever may be entitled thereto, and the estate right, title and interest of the Trustee therein shall thereupon cease, determine and become void ; and the Trustee shall in such case, on demand of the Railway Company and at the cost and expense of the latter, enter satisfaction and discharge of this indenture upon the records ; otherwise the same shall be, continue and remain in full force and virtue.

Covenant to waive stay or extension laws.

ARTICLE TWENTIETH.—The Railway Company further agrees and covenants that it will not at any time insist upon or plead or in any manner whatever claim, or take the benefit or advantage of any stay or extension law now or at any time hereafter in force, nor will it claim, take, or insist upon any benefit or advantage from any law now or hereafter in force providing for the valuation or appraisement of the mortgaged property or premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained or to the decree of any court of competent jurisdiction ; nor will it, after any such sale or sales, claim or exercise any right under any statute to redeem the property so sold or any part thereof, or obstruct or impede the accepted purchaser from taking possession of the same ; and it hereby expressly waives all benefit or advantage of any such law or laws, and covenants that it will not hinder, delay or impede the execution of any power herein granted and delegated to the Trustee, but will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

Covenant for further assurance.

The Railway Company further agrees and covenants that it will also do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all and every such further acts, deeds, transfers and assurances for the better assuring, conveying and confirming unto the Trustee all and singular the premises, estates and properties hereby conveyed, or intended so to be, as the Trustee or a majority in amount of the holders of bonds issued and outstanding hereunder shall reasonably require for better ac-

complishing the provisions and purposes of this indenture and for better securing payment of the principal and interest of the bonds intended to be secured hereby. All the covenants, stipulations, promises and agreements in this indenture contained by or on behalf of the Railway Company shall be for the sole and exclusive benefit of the parties hereto and of the holders of the bonds hereby secured and shall bind and apply to the successors and assigns of said Railway Company, whether so expressed or not. Every such successor and assign shall possess and may exercise each and every right and power of the Railway Company hereunder.

Agre ' t ' hereof applicable only to parties, successors and assigns.

No recourse under or upon any obligation, covenant or agreement contained in this indenture, or in any bond or coupon hereby secured, or under any judgment obtained against the Railway Company, or otherwise, shall be had against any incorporator, stockholder, officer or director of the Railway Company or any successor corporation, either directly or through the Railway Company, by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise. This indenture and the obligations hereby secured are solely corporate obligations, and no personal liability whatever shall attach to or be incurred by the stockholders, directors or officers of the Railway Company, or any successor corporation, or any of them, under or by reason of any of the obligations, covenants or agreements contained in this indenture, or in any of the bonds or coupons hereby secured, nor shall any such personal liability be implied therefrom; and any and all personal liability of every name and nature, whether at common law or in equity, or by statute or constitution, of every such stockholder, officer or director is hereby expressly waived as a condition of and consideration for the execution of this indenture and the issue of such bonds and coupons.

Immunity of stockholders, officers and directors from personal liability.

ARTICLE TWENTY-FIRST.— Any request or other instrument required by this indenture to be signed and executed by bondholders may be in any number of

Form and proof of requests by bondholders, etc.

concurrent instruments of similar tenor, and may be executed by such bondholders in person, or by agent or attorney appointed by an instrument in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent or attorney, or of the holding by any person of coupon bonds transferable by delivery, shall be sufficient for any purpose of this indenture, and shall be conclusive in favor of the Trustee with regard to any action taken by it under such request or other instrument, if made in the following manner, viz.: (1) The fact and date of the execution by any person of any such request or of any other instrument or writing may be proved by the certificate of any notary public or other officer authorized to take, either within or without the State of New York, acknowledgments of deeds to be recorded in said State, certifying that the person signing such request or other instrument acknowledged to him the execution thereof; or by the affidavit of a witness to such execution. (2) The amount of coupon bonds transferable by delivery held by any person executing any such request or other instrument as a bondholder, and the amounts and issue numbers of the bonds held by such person and the date of his holding the same, may be proved by a certificate executed by any trust company, bank or other depositary (wheresoever situated) whose certificate shall be deemed satisfactory by the Trustee, showing that at the date therein mentioned such person had on deposit with such depositary or exhibited to it the bonds described in such certificate. (3) The ownership of registered bonds shall be proved by the books for the registry of such bonds provided for in Article First hereof. The Trustee shall, however, not be bound to recognize any person as a bondholder unless nor until his bonds are submitted to the Trustee for inspection, if required, and his title satisfactorily established, if disputed.

Definitions.

ARTICLE TWENTY-SECOND.—Except when otherwise indicated, the words "the Trustee" or "said Trustee," or any other equivalent term, as used in this indenture, shall be held and construed to mean the

Trustee or Trustees for the time being, and the words "bond," "bondholder" and "holder" shall include the plural as well as the singular number.

Acceptance of trusts.

ARTICLE TWENTY-THIRD.—Upon the terms and conditions for the protection and security of the Trustee, herein stated (of which those stated in Article Fifteenth hereof shall be deemed to be paramount), and not otherwise, the Morton Trust Company hereby accepts the trusts of this instrument, and the Railway Company and all holders of bonds and coupons secured hereby expressly assent and agree to and acknowledge themselves bound by said terms and conditions.

IN WITNESS WHEREOF, the parties hereto of the first and second parts have duly caused these presents to be executed in duplicate in their respective corporate names by their respective presidents or vice-presidents and their respective corporate seals to be hereto affixed and attested by their respective secretaries or assistant secretaries, the day and year first above written.

METROPOLITAN STREET RAILWAY COMPANY,
by H. H. VREELAND,
[Corporate Seal.] *President.*

Attest:
CHARLES E. WARREN,
Secretary.

Signed, sealed and delivered on behalf of Metropolitan Street Railway Company in the presence of
FELIX M. GERNSHEIM.

MORTON TRUST COMPANY,
by J. K. CORBIERE,
[Corporate Seal.] *Second Vice-President.*

Attest:
H. M. FRANCIS,
Secretary.

Signed, sealed and delivered on behalf of Morton Trust Company in the presence of
G. L. WILMERDING.

Acknowledgment by Railway Company.

STATE OF NEW YORK, }
County of New York, } ss.:

On the 21st day of March, in the year 1902, before me personally came Herbert H. Vreeland, to me known, who, being by me duly sworn, did depose and say that he resided in the City of New York; that he is the President of the Metropolitan Street Railway Company, one of the corporations described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

FELIX M. GERNSHEIM,
Notary Public,
New York County.

[Notarial Seal.]

Acknowledgment by Trustee.

STATE OF NEW YORK, }
County of New York, } ss.:

On the 21st day of March, in the year 1902, before me personally came James K. Corbiere, to me known, who, being by me duly sworn, did depose and say that he resided in Caldwell, New Jersey; that he is the Second Vice-President of the Morton Trust Company, one of the corporations described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

FELIX M. GERNSHEIM,
Notary Public,
New York County.

[Notarial Seal.]

METROPOLITAN STREET RAILWAY COMPANY.

Certificate of the Vote at Special Stockholders' Meeting to Authorize Refunding Mortgage to Morton Trust Company, as Trustee.

We, the undersigned, Chairman and Secretary respectively, of a special meeting of the stockholders of the Metropolitan Street Railway Company called for the purpose of securing the consent of stockholders owning at least two-thirds of the capital stock of the corporation to a mortgage upon its property and franchises to the Morton Trust Company, as Trustee, to secure an issue of bonds to the principal amount of $65,000,000, do hereby certify as follows:

1. That the said Metropolitan Street Railway Company is a railroad corporation duly incorporated and existing under the laws of the State of New York with an outstanding capital stock of fifty-two million dollars ($52,000,000) divided into five hundred and twenty-thousand (520,000) shares of one hundred dollars ($100) each. That a notice, stating the time, place and object of said meeting was duly mailed to each stockholder at his post-office address at least three weeks previous to the meeting, and was also published at least once a week for three weeks successively in two newspapers regularly printed in the City and County of New York, where said company has its principal office.

2. That at the time and place specified in said notice stockholders owning at least two-thirds of the capital stock of said corporation appeared in person or by proxy and organized said meeting by choosing the undersigned, Daniel B. Hasbrouck, as Chairman and the

undersigned, Charles E. Warren, as Secretary thereof respectively.

3. That the following resolution was duly offered and seconded :

" WHEREAS, the Board of Directors have approved a proposed mortgage by this company to the Morton Trust Company, as Trustee, to be dated March 21, 1902, and due April 1, 2002, to be known as the company's Refunding Mortgage, to secure bonds issued and to be issued thereunder to an amount not to exceed in the aggregate Sixty-five million dollars ($65,000,000), to be known as the company's Refunding One Hundred Year Gold Bonds, and have submitted such mortgage to this meeting of stockholders ; it is

Resolved, that consent is hereby given to the Metropolitan Street Railway Company to execute, issue and deliver a mortgage in the sum of Sixty-five million dollars ($65,000,000) upon the railroads, railroad routes, property and franchises of the company to secure the payment of One Hundred Year Gold Bonds of the company to the amount of Sixty-five million dollars ($65,000,000), such bonds to bear interest at a rate not exceeding four per centum per annum ; and it is further

Resolved, that the printed form of said mortgage as submitted to this meeting, and of the coupon and registered bonds to be secured thereby, are hereby in all respects approved."

4. That stockholders owning 405,175 shares of the capital stock of said corporation voted in favor of said resolution and stockholders owning 1,571 shares of said stock voted against said resolution, and that stockholders owning at least two-thirds of the entire capital stock of said corporation voted in favor of said resolution and the same was adopted, and that by such

vote stockholders owning at least two-thirds of the entire capital stock of the corporation consented to the issue of said mortgage.

IN WITNESS WHEREOF we have made, signed, verified and acknowledged this certificate as of the 20th day of March, 1902.

DANIEL B. HASBROUCK,
Chairman.

CHARLES E. WARREN,
Secretary.

STATE OF NEW YORK, }
City and County of New York, } ss. :

DANIEL B. HASBROUCK and CHARLES E. WARREN, being severally duly sworn, each for himself deposes and says, that he the said Daniel B. Hasbrouck was Chairman of the meeting mentioned in the foregoing certificate, and that he the said Charles E. Warren was Secretary of the said meeting; that he has read the foregoing certificate subscribed by him and knows the contents thereof, and that the same is true.

DANIEL B. HASBROUCK,
CHARLES E. WARREN.

Sworn to before me this 20th day of March, 1902.

FELIX M. GERNSHEIM,
Notary Public,
New York County.

{ NOTARIAL SEAL. }

STATE OF NEW YORK, }
City and County of New York, } ss. :

On this 20th day of March, 1902, before me personally appeared Daniel B. Hasbrouck and Charles E. Warren, to me known, and known to me to be the same persons who executed the foregoing certificate and the

foregoing verification, and each acknowledged to me that he executed such certificate and such verification.

IN WITNESS WHEREOF, I have hereunto set my hand and my notarial seal this 20th day of March, 1902.

FELIX M. GERNSHEIM,
Notary Public,
New York County.

{ NOTARIAL SEAL. }

STATE OF NEW YORK,

BOARD OF RAILROAD COMMISSIONERS.

ALBANY, March 21, 1902.

The Board of Railroad Commissioners, under the provisions of subdivision 10 of Section 4 of the Railroad Law, hereby consents to the issue of the foregoing mortgage for sixty-five million dollars ($65,000,000) by the Metropolitan Street Railway Company.

By the Board,

[SEAL.] E. C. MCENTEE,
Assistant Secretary.

Attest :

Exhibit E.

Order Making Metropolitan Street Railway Company Party Defendant.

IN THE
CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and DEGNON CONTRACTING COMPANY, Complainants, AGAINST NEW YORK CITY RAILWAY COMPANY, Defendant.	In Equity.
IN THE MATTER OF The Petitioner of METROPOLITAN STREET RAILWAY COMPANY.	

On the 1st day of October, 1907, this cause came on to be heard upon the petition of Metropolitan Street Railway Company, to be made a party defendant in this suit and for other relief, on consideration whereof, and after hearing J. Parker Kirlin, for said petitioner; James Byrne, for the complainants; and James L. Quackenbush for the defendant,

IT IS ORDERED that the petitioner, Metropolitan Street Railway Company, be and it hereby is made a party defendant in this cause.

IT IS FURTHER ORDERED that the receivership in this cause be and the same hereby is extended to the prop-

erties of said petitioner Metropolitan Street Railway Company as prayed in said petition, and that Adrian H. Joline and Douglas Robinson, heretofore appointed receivers in this cause, be and they hereby are appointed receivers of the properties of said petitioner, with the powers and duties prescribed by order entered in this cause September 24h, 1907, appointing them receivers in this cause.

AND IT IS FURTHER ORDERED that each and every of the officers, directors, agents and employees of said petitioner Metropolitan Street Railway Company, and all other persons whomsoever be, and they are hereby required and commanded forthwith, upon demand of the said receivers or their duly authorized agent, to turn over and deliver to said receivers or their duly constituted representative, any and all books of account, vouchers, papers, deeds, leases, contracts, bills, notes, accounts, moneys or other property in his or their hands or under his or their control, and each of such directors, officers, agents and employees is hereby commanded and required to obey and perform such orders as may be given to them from time to time by the said receivers or their duly constituted representatives, in conducting the operation of the said system and in discharging their duties as receivers.

And said petitioner, said Metropolitan Street Railway Company and its officers, directors, agents and employees and all other persons claiming to act by, through or under said petitioner and all other persons whomsoever are hereby enjoined from interfering in any way whatsoever with the possession or management of any part of said property over which the receivers have been appointed or interfering in any way to prevent the discharge of their duties or their operating the same; and any party in interest may apply for direction.

Dated New York, October 1st, 1907.

E. HENRY LACOMBE,
U. S. Circuit Judge.

Filed October 1st, 1907.

Exhibit F.

Petition of Morton Trust Company.

IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of MORTON TRUST COMPANY.

TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

The Petition of Morton Trust Company, a corporation organized and existing under the Laws of the State of New York, alleges as follows:

I. Your petitioner is a corporation organized and existing under the Laws of the State of New York.

II. At all times hereinafter mentioned Metropolitan Street Railway Company was and still is a corporation duly organized and existing under the Laws of the State of New York.

III. Heretofore by its mortgage or deed of trust dated March 21, 1902 the said Metropolitan Street Railway Company, in order to secure an issue of bonds not exceeding in the aggregate the principal sum of $65,000,000 at any time outstanding, payable April 1, 2002, with interest at the rate of 4% per annum, payable semi-annually on the first days of April and October, did grant and convey unto Morton Trust Company

as Trustees all the Street surface and railroads and property owned by it, and all the street surface railroads and property held or operated by it as lessee under certain leases as in said mortgage or deed of trust more specifically described.

Said Metropolitan Street Railway Company thereafter and in accordance with the provisions of said mortgage or deed of trust, issued its bonds, secured by said mortgage, to the amount of $16,604,000 as your petitioner is informed and believes, and the same are now outstanding in the hands of *bona fide* owners and holders for value, and are, as your petitioner is advised, a lien upon the property of the said Metropolitan Street Railway Company described in said mortgage. For a particular statement of the terms and conditions of said mortgage, your petitioner prays leave to refer thereto.

IV. In a suit in this Court in which the Pennsylvania Steel Company and The Degnon Contracting Company were complainants and New York City Railway Company defendant by an order of this Court made on September 24, 1907, Adrian H. Joline and Douglas Robinson were appointed receivers of the New York City Railway Company and they duly qualified as such receivers and entered upon the possession of said property and are now acting as such receivers and as such are in possession of the property of the New York City Railway Company.

Thereafter and on or about October 1, 1907, the Metropolitan Street Railway Company on its petition, was made a party to said cause and Adrian H. Joline and Douglas Robinson were appointed receivers of the properties of Metropolitan Street Railway Company and thereafter they duly qualified as such receivers, and they are now both as receivers of the Metropolitan Company and as receivers of the New York City Company in possession of all the railroads, properties and franchises described in said mortgage to your petitioner, dated March 21, 1902.

V. Your petitioner is advised and alleges that in and by the said mortgage to your petitioner dated March 21, 1902, it is provided that in case in any judicial proceedings by any party other than the trustee a receiver should be appointed of the Metropolitan Street Railway Company, your petitioner as trustee under said mortgage should be entitled forthwith to exercise certain rights and powers conferred by said mortgage, including the right to collect and receive the tolls, earnings, incomes, rents, issues and profits of the mortgaged property.

Persons owning or representing, as your petitioner is informed, a large amount of bonds issued under and secured by said mortgage to your petitioner dated March 21, 1902, have requested your petitioner to proceed to enforce their rights under the said mortgage and to that end to institute such judicial proceedings as to it may seem most advisable.

VI. Your petitioner is about to file in this Court a bill for the enforcement of its rights under said mortgage dated March 21, 1902, and desires to make the said Adrian H. Joline and Douglas Robinson, who as receivers as aforesaid, are now in possession of said property embraced in said mortgage, parties thereto.

Your petitioner therefore prays that by an order of this Court it may be permitted to make the said Adrian H. Joline and Douglas Robinson parties to said bill to be filed by it, and it may have such other and further relief as may be just.

MORTON TRUST COMPANY,
By
[SEAL] H. M. FRANCIS,
Secretary,
Petitioner.

BRONSON WINTHROP,
Solicitor for Petitioner,
32 Liberty Street,
New York City,
N. Y.

UNITED STATES OF AMERICA,
Southern District of New York, } ss. :
CITY AND COUNTY OF NEW YORK,

HARRY M. FRANCIS being duly sworn doth depose and say that he is the Secretary of Morton Trust Company, the Petitioner named in the foregoing petition. That he has read the foregoing petition and knows the contents thereof and that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes the same to be true.

H. M. FRANCIS.

Sworn to before me this 8th day of Oct., 1907.

E. J. BLEEZARDE,
Notary Public,
Richmond Co.,
Certificate filed in New York Co.

(SEAL)

Exhibit G.

Order Making Receivers Parties to the Bill of Complaint of Morton Trust Company.

THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of MORTON TRUST COMPANY.

And now comes the above-named Petitioner and files its petition, praying for leave to make Adrian H. Joline and Douglas Robinson heretofore appointed by this Court Receivers of Metropolitan Street Railway Company, parties to the Bill to enforce certain rights of the petitioner as Trustee under the mortgage or deed of trust, dated March 21, 1902, and executed by Metropolitan Street Railway Company to Morton Trust Company as trustee, which bill is to be filed by the Petitioner; on consideration whereof, it is on motion of Bronson Winthrop, Esq., solicitor for said petitioner,

ORDERED that the prayer of said petitioner be granted, and that said Petitioners have leave to make the said Adrian H. Joline and Douglas Robinson as Receivers of New York City Railway Company and said Adrian H. Joline and Douglas Robinson as Receivers of Metropolitan Street Railway Company parties to the said bill.

Oct. 8th, 1907.

E. HENRY LACOMBE,
U. S. C. J.

Filed October 8th, 1907.

Exhibit H.

Bill of Complaint of Morton Trust Company.

CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

MORTON TRUST COMPANY, Complainant, AGAINST METROPOLITAN STREET RAILWAY COMPANY, NEW YORK CITY RAILWAY COMPANY, ADRIAN H. JOLINE and DOUGLAS ROBINSON as Receivers of New York City Railway Company, ADRIAN H. JOLINE and DOUGLAS ROBINSON as Receivers of Metropolitan Street Railway Company, THE PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY, Defendants.	In Equity.

TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK:

Morton Trust Company, a corporation organized and existing under the laws of the State of New York and a citizen of said State, brings this, its Bill of Complaint, against Metroplitan Street Railway Company, a corporation organized and existing under and by virtue of the laws of the State of New York and a citizen of said State, and New York City Railway Com-

pany, a corporation organized and existing under and by virtue of the laws of the State of New York and a citizen of said State, and Adrian H. Joline and Douglas Robinson, both citizens of the State of New York, as receivers of said New York City Railway Company, and said Adrian H. Joline and Douglas Robinson as Receivers of said Metropolitan Street Railway Company, and The Pennsylvania Steel Company, a corporation organized and existing under the laws of the State of Pennsylvania and a citizen of said State, and The Degnon Contracting Company, a corporation organized and existing under the laws of the State of New Jersey and a citizen of said State; and thereupon your orator complains and alleges as follows:

I. Your orator is a corporation duly organized and existing under and by virtue of the laws of the State of New York and a citizen of said State.

II. On information and belief, the defendant Metropolitan Street Railway Company (hereinafter in this bill called "the Metropolitan Company" is a corporation organized and existing under the laws of the State of New York and a citizen of said State, having been organized by a merger and consolidation at divers times of Houston, West Street & Pavonia Ferry Railroad Company, Broadway Railway Company, South Ferry Railroad Company, The Metropolitan Crosstown Railway Company, The Lexington Avenue & Pavonia Ferry Railroad Company and The Columbus and Ninth Avenue Railroad Company, all of said companies having been street surface railroad companies organized and existing under the laws of the State of New York.

On information and belief the defendant New York City Railway Company (hereinafter in this bill called "the New York Company") is a corporation organized and existing under the laws of the State of New York and a citizen of said State, having been organized under the name and style of "Interurban Street Railway Com-

pany"; subsequently and pursuant to proceedings duly had, the said Interurban Street Railway Company changed its name and is now known as "New York City Railway Company."

On information and belief the defendant The Pennsylvania Steel Company is a corporation duly organized and existing under the laws of the State of Pennsylvania, and a citizen of said State and the defendant The Degnon Contracting Company is a corporation duly organized and existing under the laws of the State of New Jersey and a citizen of said State.

III. Heretofore and prior to March 21, 1902, the defendant Metropolitan Company in the exercise of its powers under the laws of the State of New York, in accordance with resolutions duly passed by its Board of Directors and by its stockholders at respective meetings thereof duly called and held, duly authorized the issue of a series of bonds to be executed under its corporate seal and attested by the signatures of its president or one of its vice-presidents, and attested by its secretary or an assistant secretary, and to be issued to an amount not exceeding in the aggregate the principal sum of Sixty-five million dollars ($65,000,000) at any one time outstanding; said bonds to be either coupon or registered, the coupon bonds bearing date April 1, 1902 and the registered bonds bearing date at the time of their respective issue; by the terms of which bonds the Metropolitan Company promised to pay, in the case of coupon bonds, to the bearer thereof, and, in the case of registered bonds, to the registered owner thereof or his assigns, at the office or agency of the Metropolitan Company in the City of New York on the first day of April in the year 2002, the sum of One thousand dollars ($1,000) in the case of coupon bonds and the sum of One thousand dollars ($1,000) or multiples thereof in the case of registered bonds, gold coin of the United States of America, of or equal to the then standard of weight and fineness, and to pay interest thereon, in the

case of coupon bonds, from April 1, 1902, and, in the case of the registered bonds, from the first day of April or October, as the case might be, next preceding the date thereof, payable at its said office in like gold coin, semi-annually on the first days of April and October in each year, in the case of coupon bonds, upon presentation and surrender, as they might severally mature, of the interest coupons thereto annexed, and, in the case of registered bonds, to the registered owner thereof or his assigns. The form and tenor of said bonds are fully set forth in the mortgage hereinafter referred to.

IV. On or about March 21, 1902, the Metropolitan Company being thereunto duly authorized by the action of its Board of Directors and with the consent of stockholders owning at least two-thirds of the entire capital stock of the Metropolitan Company, such stock having been represented and voted upon in person or by proxy at a special meeting of the stockholders duly called for that purpose, in pursuance to the statute in such case made and provided, and with the consent of the Board of Railroad Commissioners of the State of New York, the consent of said stockholders evidenced by a sworn certificate of the vote of said meeting and the consent of said Board, both in due form, having been contemporaneously filed and recorded in accordance with law in the office of the Register of the County of New York in which County the Metropolitan Company had its principal place of business and wherein its property was situated, duly made, executed and delivered to your orator, as trustee, its certain mortgage or deed of trust dated on that day, wherein and whereby in order to secure the payment of the principal and interest of all such bonds at any time issued and outstanding and to secure the performance and observance of all the covenants and conditions therein contained, it granted, bargained, sold, released, conveyed, assigned, transferred and set over unto your orator, as trustee, its successors and assigns forever,

all and singular, the railroads, railroad routes, estates, leaseholds, properties, rights, privileges and franchises described as follows, to-wit :

I.

STREET SURFACE RAILROADS IN THE COUNTY OF NEW YORK, CITY OF NEW YORK, AND STATE OF NEW YORK, OWNED BY THE METROPOLITAN STREET RAILWAY COMPANY, DESCRIBED AS FOLLOWS :

HOUSTON, WEST STREET AND PAVONIA FERRY, OR AVENUE C LINE.

Commencing at the intersection of Duane Street with West Street, thence through and along Duane Street with a double track to Greenwich Street, thence through and along Greenwich Street with a single track to Charlton Street, thence through and along Charlton Street with a single track to Prince Street, thence through and along Prince Street with a single track to Bowery, thence upon and across the Bowery with a single track to Stanton Street, thence through and along Stanton Street with a single track to Pitt Street, thence through and along Pitt Street with a single track to Avenue C, thence through and along Avenue C, with a single track to Third Street, thence through and along Avenue C, from Third Street with a double track to the northern extremity of the said Avenue C, thence through and along Third Street, connecting with the double track in Avenue C, with a single track to First Avenue, thence through and along First Avenue with a single track to East Houston Street, thence through and along East Houston Street with a single track to the Bowery, thence upon and across the Bowery with a single track to West Houston Street, thence through and along West Houston Street, with a single track to Washington Street, thence through and along Washington Street with a single track to Duane Street; thence through and along Duane Street,

connecting with the double track to the place of beginning, being the route described in Chapter 625 of the Laws of 1868 of the State of New York.

Extension on Avenue C Through Seventeenth Street, Etc.

From Avenue C through Seventeenth and Eighteenth Streets, by single track in each street, to Avenue A, thence through and along Avenue A, by double track to Twenty-third Street; thence through and along Twenty-third Street, by double track to First Avenue; thence through and along First Avenue, by double track, to Thirty-sixth Street; thence through and along Thirty-sixth Street, by single track, to Lexington Avenue: and also through and along Thirty-fifth Street, by single track, from First Avenue to Lexington Avenue; thence through and along Lexington Avenue, by single or double track, to Forty-second Street, thence through and along Forty-second Street by double track to Fourth Avenue. Also, by single track through and along Charlton Street, from Greenwich Street to West Street; and, by single track, through and along West Houston Street from Washington Street to West Street; thence through and along West Street by double track, to Chambers Street. Also, through and along Tenth Street, connecting with the double track in Avenue C, by single track to Avenue D; thence through and along Tenth Street, by double track, to the East River. Also, connecting with the double track on Tenth Street, through and along Avenue D, by single track, to Eleventh Street; thence through and along Eleventh Streeth, by single track, to and connecting with the double track on Avenue C, being the route described in Chapter 19 of the Laws of 1871 of the State of New York.

Chamber Street and Grand Street Ferry Line.

Commencing at the foot of Roosevelt Street, East River, thence through, upon and along South Street, with

double tracks to James Slip; thence through, upon and along James Slip with double tracks, to New Chambers Street: thence through, upon and along New Chambers Street to Chatham Street with double tracks; thence across Chatham Street to Chambers Street, with single track; thence through, upon and along Chambers Street, with single track, to Pavonia Avenue Ferry, foot of Chambers street, North River; thence returning, with single or double tracks, through, upon and along West Street to Duane Street; thence through, upon and along Duane Street, with single track to and across Chatham Street to connect with the double tracks at New Chambers Street. Also from New Chambers Street, at Madison Street, through, upon and along Madison Street, with double tracks to Grand Street; thence through, upon and along Grand Street, with single or double tracks to thr ferry at the foot of Grand Street. Also, from Madison Street, at Jackson Street, through, upon and along Jackson Street, with double or single tracks to Cherry Street; thence through, upon and along Cherry Street, with double or single tracks to the East River; thence through, upon and along East Street, with double or single tracks, to connect with the tracks at the foot of Grand Street, East River, being the route described in the resolution of the Common Council of the City of New York, adopted on December 30, 1884.

Broadway Surface Line.

Commencing at the southerly end of Broadway near the Battery and running thence with double tracks through and along Broadway, and across Fourteenth Street to and along Union Square to a point at or near the intersection of Fifteenth Street and West Union Square, being the route described in the resolution of the Common Council of the City of New York, adopted December 5, 1884.

South Ferry Line.

Commencing at the northerly side of Vesey Street; thence through, upon and along Church Street, with double track to Morris Street; thence through, upon and along Morris Street, with a double track to Greenwich Street; thence through, along and upon Greenwich Street, with a double track to Battery Place; thence through, upon and along Battery Place, with a double track to State Street; thence through, upon and along State Street with a single track to Whitehall Street; thence through, upon and along Whitehall Street, with a single track to the South Ferry; returning through, upon and along Whitehall Street to Bowling Green; thence through, upon and along the southerly side of Bowling Green to connect with double tracks at Battery Place, being the route described in Chapter 508 of the Laws of 1874 of the State of New York.

Metropolitan Cross-Town Line,

Commencing upon East Street, at or near the Grand Street Ferry, and running thence through, upon and along East Street, with a double track to Delancey Slip or Street; thence through, upon and along Delancey Street, with a double track to the Bowery; thence through, upon and across the Bowery to Spring Street; thence through, upon and along Spring Street with a double track, to South Fifth Avenue; thence through, upon and along South Fifth Avenue, with a double track, to Fourth Street; thence through, upon and along Fourth Street, with a double track to Macdougal Street; thence through, up and along Macdougal Street, with a double track, to Waverly Place; thence through, upon and along Waverly Place, to Christopher Street, with a double track; thence through and along Waverly Place, from Christopher Street to Bank Street with a single track; thence through, upon and along Bank Street, with a

double track to Greenwich Avenue; thence through, upon and along Greenwich Avenue, with a double track, to Thirteenth Street and Horatio Street; thence through, upon and along Thirteenth Street and Horatio Street, with a single track, to Eighth Avenue; thence through, upon and across Eighth Avenue to Thirteenth Street; thence through, upon and along Thirteenth Street, with a double track to Thirteenth Avenue; thence through, upon and along Thirteenth Avenue, with a double track, to Fourteenth Street, being the route described in the resolution of the Common Council of the City of New York, adopted December 24, 1889.

Lexington Avenue and Pavonia Ferry Line.

Commencing at Forty-second Street, in the City of New York, at a point of connection with the tracks of the Houston, West Street and Pavonia Ferry Railroad Company, at the junction of said street with Lexington Avenue; thence on and over said Lexington Avenue, with double tracks, to Harlem River, with further construction and extensions from the junction of One hundred and sixteenth Street and Lexington Avenue, through One hundred and sixteenth Street to Morningside Park and to the East River, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Columbus Avenue and Ninth Avenue Line.

Commencing in Columbus Avenue, in the City of New York, at or near Sixty fourth Street, there to connect with the existing double track of the Ninth Avenue Railroad Company in said avenue; thence running across the surface of the Boulevard and upon, along and over the surface of Columbus Avenue (formerly Ninth Avenue) with double tracks to One hundred and tenth Street; also from Columbus Avenue, with double tracts through and along One

hundred and sixth Street to Amsterdam Avenue, to connect with the existing double track in Amsterdam Avenue (formerly Tenth Avenue), now owned by the Ninth Avenue Railroad Company, being the route described in the resolution of the Common Council of the City of New York, adopted October 10, 1892.

Fort Lee Ferry Extension.

Commencing at the intersection of One hundred and twenty-fifth Street and Amsterdam Avenue (formerly Tenth Avenue), running thence westerly, through One hundred and Twenty-fifth Street to the Boulevard, thence northerly through the Boulevard to One hundred and thirtieth Street and thence westerly, through One hundred and thirtieth Street westerly to Twelfth Avenue, to a point on the west side of said avenue at or near Manhattan Street and at or near Fort Lee Ferry, being the route described in the resolution of the Common Council of the City of New York, adopted December 19, 1893.

Columbus and Ninth Avenue Railroad Connection and Extension on One Hundred and Ninth Street.

Commencing at the intersection of Columbus Avenue at One hundred and ninth Street, and connecting there by suitable curves, switches and appliances with the road of the Columbus and Ninth Avenue Railroad Company, running thence easterly with double tracks, through, upon and along One hundred and Ninth Street to Manhattan Avenue; thence northerly, upon Manhattan Avenue, with double tracks, to the southerly side of Cathedral Parkway (formerly One hundred and tenth Street), there to unite with an extension or branch of the Metropolitan Street Railway Company, being the route described in the resolution of the Common Council of the City of New York, adopted September 18, 1894.

METROPOLITAN STREET RAILWAY CONNECTION AND EXTENSION ON MANHATTAN STREET.

Commencing at the intersection of Manhattan Avenue and One hundred and sixteenth Street, and connecting there by suitable curves, switches and appliances with the road of the Metropolitan Street Railway Company, running thence southerly, with double tracks, through, upon and along Manhattan Avenue to the southerly side of Cathedral Parkway (formerly One hundred and tenth Street), there to unite with an extension or branch of the Columbus and Ninth Avenue Railroad Company, being the route described in the resolution of the Common Council of the City of New York, adopted September 18, 1894.

HOUSTON, WEST STREET AND PAVONIA FERRY CONNECTION AND EXTENSION ON RIDGE STREET AND MONTGOMERY STREET.

Commencing at the intersection of Houston Street and Avenue C in the City of New York, connecting there by suitable curves and appliances with the route of the Houston, West Street and Pavonia Ferry Railroad Company, running thence through, upon and along Houston Street over the single track in said street of the road of the Forty-second Street and Grand Street Ferry Railroad Company to Ridge Street; thence (with suitable curves and appliances at or near Ridge Street) through, upon and along Ridge Street with a single track to the said point of union, and by the construction, maintenance and operation of an extension or branch of the said railroad formerly of the Chambers Street and Grand Street Ferry Railroad Company, commencing at the intersection of Montgomery Street and Madison Street, connecting there by suitable curves and appliances with the said road formerly of the Chambers Street and Grand Street Ferry Railroad Company, running thence with a single track through, upon and along Montgomery Street to

Division Street; thence through, upon and across Division Street to Ridge Street; thence through, upon and along Ridge Street with a single track to the said point of union, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

HOUSTON, WEST STREET AND PAVONIA FERRY RAILROAD CONNECTION AND EXTENSION ON PITT STREET AND GOUVERNEUR STREET.

Commencing at the intersection of Third Street and Avenue C, connecting there by suitable curves and appliances with the tracks of the Houston, West Street and Pavonia Ferry Railroad Company, and running thence with an additional single track through, upon and along Avenue C to and across Houston Street to Pitt Street, there to connect by suitable curves and appliances with the existing single track of the Houston, West Street and Pavonia Ferry Railroad Company in Pitt Street, and running thence through, upon and along Pitt Street over the said single track in said street to Stanton Street; thence (with suitable connections and curves at Stanton Street) upon and across Stanton Street with a single track; thence through, upon and along Pitt street to said point of union; and by the construction, maintenance and operation of an extension or branch of the railroad formerly of the Chambers Street and Grand Street Ferry Railroad Company commencing at the intersection of Gouverneur Street and Madison Street, connecting there by suitable curves and appliances with the said road formerly of the Chambers Street and Grand Street Ferry Railroad Company, running thence, with a single track, through, upon and along Gouverneur Street to and across Grand Street; thence with a single track through, upon and along Pitt Street to said point of union, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Metropolitan Cross-Town Connection and Extension on West Third Street.

Commencing at the intersection of South Fifth Avenue and West Third Street, connecting there by suitable curves and attachments with the road of The Metropolitan Cross-Town Railway Company, and running thence westerly with double tracks through, upon and along West Third Street to a point of union with an extension or branch of the railroad of the Sixth Avenue Railroad Company, at or near Sullivan Street, being the route described in the resolution of the Common Council of the City of New York adopted September 29, 1892.

Metropolitan Cross-Town Connection and Extension on Broome, Sullivan and Watts Streets.

From a connection with the route of The Metropolitan Cross-Town Railway Company on South Fifth Avenue, at the intersection of Broome Street, by suitable curves and appliances thence with double tracks through, upon and along Broome Street to Sullivan Street; thence through upon and along Sullivan Street with double tracks to Watts Street; thence through, upon and along Watts Street with double tracks to a union with the route and road of the Houston, West Street and Pavonia Ferry Railroad Company, now on West Street, and to connect also with Desbrosses Street Ferry, said branch over said streets to said union of the routes or road of The Metropolitan Cross-Town Railway Company when built on South Fifth Avenue to Broome Street, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

METROPOLITAN CROSS-TOWN CONNECTION AND EXTENSION ON SOUTH FIFTH AVENUE.

Commencing at South Fifth Avenue and Spring Street, connecting there by suitable curves and appliances with rhe existing road of The Metropolitan Cross-Town Railway Company, and running thence southerly with double tracks through, upon and along South Fifth Avenue to Broome Street, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

HOUSTON, WEST STREET AND PAVONIA FERRY CONNECTION AND EXTENSION ON LEXINGTON AVENUE.

Along and over Lexington Avenue from Twenty-seventh Street to Thirty-fifth Street by double track, and by single track from Thirty-fifth Street to Thirty-sixth Street, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

METROPOLITAN STREET RAILWAY CONNECTION AND EXTENSION ON WEST BROADWAY.

Commencing at the intersection of West Broadway and Duane Street, and connecting there by suitable curves, switches and appliances with the Metropolitan Street Railway Company's existing tracks in said Duane Street, running thence southerly in or upo West Broadway, with double tracks to Chambers Street, and thence southerly with double tracks, in or upon West Broadway (a portion of which was formerly College Place), to Vesey Street, there to connect with a double track extension or branch of the railroad and route of the Central Park, North and East River Railroad Company, being the route described in the resolution of the Common Council of the City of New York, adopted April 14, 1896.

II.

REAL ESTATE OWNED BY THE METROPOLITAN STREET RAILWAY COMPANY, BEING THE FOLLOWING DESCRIBED PIECES AND PARCELS OF LAND WITH THE BUILDINGS AND IMPROVEMENTS THEREON SITUATE, LYING AND BEING IN THE COUNTY OF NEW YORK, CITY OF NEW YORK AND STATE OF NEW YORK.

A. REAL ESTATE NOT SUBJECT TO THE METROPOLITAN STREET RAILWAY COMPANY'S GENERAL AND COLLATERAL TRUST MORTGAGE.

LEXINGTON AVENUE AND TWENTY-THIRD STREET PROPERTY.

All that certain plot, piece or parcel of land with the buildings thereon erected, situate, lying and being in the City and County of New York, bounded and described as follows: Beginning at a point formed by the intersection of the easterly line of Park (formerly Fourth) Avenue, with the northerly line or side of Thirty-second Street; running thence northerly along the easterly side of Park Avenue, one hundred ninety-seven (197) feet six (6) inches to the southeasterly corner of Park Avenue and Thirty-third Street; thence easterly along the southerly side of Thirty-third Street, four hundred twenty-five (425) feet to the southwesterly corner of Thirty-third Street and Lexington Avenue, thence southerly along the westerly side of Lexington Avenue, one hundred forty-eight (148) feet one (1) inch; thence westerly parallel or nearly so with Thirty-third Street, forty-eight (48) feet four (4) inches; thence southerly and nearly parallel with Lexington Avenue, forty-nine (49) feet five (5) inches to the northerly side of Thirty-second Street, at a point distant forty-eight (48) feet four (4) inches westerly from the westerly side of Lexington Avenue; thence westerly along the northerly side of Thirty-second Street, three hundred seventy-six (376) feet

eight (8) inches to the point or place of beginning; being the same premises heretofore conveyed to The New York and Harlem Railroad Company by the following instruments, to wit: Deed from Mary Murray, dated January 8, 1849, and recorded in the Office of the Register of the County of New York in Liber 518 of Conveyances, page 420; deed from Nathan Jackson and wife, dated February 22, 1849, and recorded in said Register's Office in Liber 558 of Conveyances, page 215; deed from John Alstyne, dated December 13, 1851, and recorded in said Register's Office in Liber 590 of Conveyances, page 226; deed from Henry Abell and wife, dated September 1, 1865, and recorded in said Register's Office, in Liber 947 of Conveyances, page 251; deed from Jesse A. Marshall and wife, John F. Marshall and William H. Wilkins and wife, dated June 1, 1875, and recorded in said Register's Office in Liber 1333 of Conveyances, page 51; deed from Peter S. Bogart and wife, dated December 10, 1849, and recorded in said Register's Office in Liber 537 of Conveyances, page 447, and which premises were conveyed by The New York and Harlem Railroad Company to Oren Root, Junior, by deed bearing date September 6, 1899, and recorded in the office of the Register of the County of New York on September 11, 1899, in Block Series (Conveyances, Section 3, Liber 65, page 136, and indexed under Block Number 888, and Section 5, Liber 63, page 307, and indexed under Block Number 1497, and were conveyed by Oren Root, Jr., to the Railway Company by indenture dated September 22, 1899, subject to a mortgage made by the said Root to the Mutual Life Insurance Company, dated September 20, 1899, to secure the payment of the sum of $950,000 and interest.

85TH AND 86TH STREETS AND MADISON AVENUE PROPERTY.

Also, all those certain lots, pieces or parcels of land, with the buildings and improvements thereon, situate, lying and being in the City and County of New York,

bounded and described as follows: Beginning at a point formed by the intersection of the northerly side of Eighty-fifth Street and the westerly side of Madison Avenue, and running thence westerly along the northerly side of said Eighty-fifth Street, two hundred twenty (220) feet; thence northerly parallel with Madison Avenue two hundred four (204) feet four (4) inches, to the southerly side of Eighty-sixth Street; thence easterly along the southerly side of Eighty-sixth Street, two hundred twenty (220) feet to the southwesterly corner of Eighty-sixth Street and Madison Avenue; and thence southerly along the westerly side of Madison Avenue two hundred four (204) feet four (4) inches to the point or place of beginning; being the same premises heretofore conveyed to The New York and Harlem Railroad Company by the following instruments, to wit: Deed from Webster Wagner and wife, dated November 5, 1881, and recorded in the office of the Register of the County of New York, in Liber 1923 of Conveyances, page 203; deed from George B. Heath, dated December 3, 1886, and recorded in said Register's Office, in Liber 1998 of Conveyances, page 468; deed from Clark R. Gavit, dated December 22, 1885, and recorded in said Register's Office in Liber 2273 of Conveyances, page 333; deed from Webster Wagner and wife, dated November 12, 1881, and recorded in said Register's Office, in Liber 1912 of Conveyances, page 342; deed from Warren S. Crane, dated November 21, 1889, and recorded in said Register's Office, in Liber 2273 of Conveyances, page 331, and deed from James M. Gotendorf and others, dated August 12, 1885, and recorded in said Register's Office, in Liber 1912 of Conveyances, page 347; and which premises were conveyed by The New York and Harlem Railroad Company to Oren Root, Junior, by deed bearing date September 6, 1899, and recorded in the office of the Register of the County of New York on September 11, 1899, in Block Series (Conveyances), Section 6, Liber 65, page 136, and indexed under Block Number 888, and Section 5, Liber 63, page 307,

and indexed under Block Number 1497, and were conveyed by Oren Root, Jr., to the Metropolitan Street Railway Company by indenture dated September 22, 1899, subject to a mortgage made by the said Root to the Mutual Life Insurance Company dated September 20, 1899, to secure the payment of the sum of $950,000, and interest.

146TH STREET, 147TH STREET, LENOX AVENUE AND 7TH AVENUE PROPERTY.

All that certain lot, piece or parcel of land situate, lying and being in the Twelfth Ward in the City of New York, bounded and described as follows: Beginning at a point on the westerly side of Lenox Avenue (formerly Sixth Avenue) at a point distant one hundred (100) feet north of the corner formed by the intersection of the northerly side of One hundred and Forty-sixth Street with the westerly side of Lenox Avenue, running thence northerly along the westerly side of said Lenox Avenue to the corner formed by the intersection of the westerly side of Lenox Avenue and the southerly side of One hundred and forty-seventh Street, running thence westerly along the southerly side of One hundred and forty-seventh Street, to the corner formed by the intersection of the southerly side of One hundred and forty-seventh Street with the easterly side of Seventh Avenue, running thence southerly along the easterly side of said Seventh Avenue to the corner formed by the intersection of the easterly side of Seventh Avenue with the northerly side of One hundred and forty-sixth Street, running thence easterly along the northerly side of One hundred and forty-sixth Street to a point distant four hundred forty (440) feet westerly from the corner formed by the intersection of the northerly side of One hundred and Forty-sixth Street with the westerly side of Lenox Avenue, (formerly Sixth Avenue), thence running northerly and parallel with the westerly side of Lenox Avenue aforesaid one hun-

dred (100) feet, thence running eastwardly and parallel with the northerly side of One hundred and forty-sixth Street four hundred forty (440) feet to the point or place of beginning; conveyed by indenture dated September 30, 1897, from The Metropolitan Traction Company of New York to the Railway Company and which indenture was recorded in the Office of the Register of the City and County of New York, on October 4, 1897, in Block Series (Conveyances) Section 7, Liber 48, page 99, and indexed under Block Number 2015 on the Land Map of the City of New York, and being part of the land which was conveyed to the Metropolitan Traction Company of New York by Charles D. Lane and Rosa G., his wife, by deed dated July 1, 1894, and recorded in the office of the Register of the City and County of New York on July 27, 1894, in Block Series (Conveyances) Section 7, Liber 22, page 384, and indexed under Block Number 2015 on the land map of the City of New York, and being subject to a mortgage of $150,000, with 5 per cent. per annum given by John D. Crimmins to the Mutual Life Insurance Company, dated February 20, 1893, and recorded in the office of the Register of the City and County of New York on February 20, 1893, in Block Series (Mortgages), section 7, Liber 23, page 301, and being also subject to the restrictions and covenants contained in a certain grant of the Mayor, Aldermen and Commonalty of the City of New York to Mary G. Pinckney, dated November 7, 1867, and recorded in the Register's Office of the City and County of New York, on November 15, 1868, in Liber 1041 of Conveyances, page 1, in so far as the same affects the said described premises.

Also that certain lot, piece or parcel of ground with the buildings thereon erected, situate, lying and being in the Twelfth Ward of the City of New York and bounded and described as follows: Commencing at the intersection of the northerly side of One hundred and forty-sixth Street with the westerly side of Lenox Avenue (Formerly Sixth Avenue), running thence

northerly along the westerly side of Lenox Avenue one hundred (100) feet or thereabouts; running thence westerly and parallel with the northerly side of One hundred and forty-sixth Street four hundred and forty (440) feet or thereabouts; running thence southerly and parallel with the westerly side of Lenox Avenue one hundred (100) feet to the northerly side of One hundred and forty-sixth Street; and thence easterly along the northerly side of One hundred and forty-sixth Street four hundred forty (440) feet or thereabouts to the point or place of beginning being a portion of the premises heretofore conveyed to The Metropolitan Traction Company of New York by Charles D. Lane and Rosa G., his wife, by deed dated July 1, 1894, and recorded in the Office of the Register of the City and County of New York in Block Series (Conveyances), Section 7, Liber 22, page 384, and indexed under Block Number 2015, and which premises were conveyed to the Metropolitan Street Railway Company by The Metropolitan Traction Company of New York by deed dated July 2, 1897, and recorded in said Register's Office on July 20, 1897, in Block Series (Conveyances), Section 7, Liber 47, page 241, and indexed under Block Number 2015; subject, however, to a mortgage made by Charles D. Lane and Rosa G., his wife, to John D. Crimmins, and recorded in Block Series (Mortgages), Section 7, Liber 38, page 298, and also subject to the restrictions and covenants contained in a certain grant from the Mayor, Aldermen and Commonalty of the City of New York to Mary G. Pinckney, dated November 7, 1867, and recorded on November 15, 1867, in the Office of the Register of the City and County of New York in Liber 1041 of Conveyances, page 1, in so far as the same affects the said described premises; provided, however, that the property described under the heading "146th, 147th Street, Lenox Avenue and 7th Avenue property" is subject to the right, title and interest therein of the Sixth Avenue Railroad Company.

DRY DOCK STREET PROPERTY.

All that certain lot, piece or parcel of land, with the building thereon erected, situate, lying and being in the Eleventh Ward in the City of New York, bounded and described as follows: Beginning at a point on the westerly side of Dry Dock Street at the middle of the party wall distant southerly from the point or angle formed by the intersection of the westerly line of Dry Dock Street and the southerly line of Eleventh Street, ninety-four (94) feet nine and one-half (9½) inches or thereabouts running thence westerly parallel or nearly so with Eleventh Street and part of the way through a party wall eighty-four (84) feet, thence northerly and parallel or nearly so with Dry Dock Street twenty-two (22) feet, thence easterly parallel or nearly so with Eleventh Street eighty-four (84) feet to the westerly line of Dry Dock Street, thence southerly along the westerly line of Dry Dock Street twenty-two (22) feet to the point or place of beginning; be the said dimensions more or less. Being the same premises conveyed to The Metropolitan Traction Company of New York by Joseph Branagan, by deed dated November 23, 1892, and recorded in the office of the Register of the City and County of New York on November 23, 1892, in Block Series (Conveyances) Section 2, Liber 14, page 444, and indexed under Block Number 380, and which were conveyed by The Metropolitan Traction Company of New York to the Metropolitan Street Railway Company by indenture dated September 15, 1897, and recorded in the office of the Register of the City and County of New York on September 28, 1897, in Block Series (Conveyances) Section 2, Liber 56, page 229, and indexed under Block Number 380.

FRONT STREET PROPERTY.

All those three certain lots, pieces or parcels of land, with the buildings and improvements erected thereon,

situate, lying and being in the City of New York, and known as Numbers 13, 15 and 17 Front Street, which, taken together, according to a survey thereof made August, 1883, are bounded and described as follows: Beginning at the northeasterly corner thereof at a point in the southerly line or side of Front Street opposite the middle of a party wall and distant thirty-two (32) feet seven (7) inches westerly from the southwesterly corner of Front and Broad Streets, and running thence southwardly parallel or nearly so with Broad Street and along the middle of said party wall, one hundred five (105) feet one (1) inch to a point opposite a fence; thence westwardly along said fence and parallel or nearly so with Front Street eighteen (18) feet nine (9) inches to an angle in said fence; thence in a northwesterly direction and along said fence to another angle therein five (5) feet; thence again westwardly parallel or nearly so with Front Street and along said fence, the brick wall of a five-story building and another fence thirty-seven (37) feet four and one-half (4½) inches to the wall of a five-story brick building; thence northwardly and along said wall to an angle therein twenty (20) feet; thence again westwardly along said wall three (3) feet six (6) inches to the middle of a party wall; thence northwardly along the middle of said party wall and parallel or nearly so with Moore Street seventy-nine (79) feet ten (10) inches to the southerly side of Front Street, and thence eastwardly along said southerly side of Front Street, sixty-five (65) feet one half (½) inch to the point or place of beginning; that portion which is known as Number 13 Front Street being subject to an agreement made by Mulford Martin with Elias H. Herrick, dated May 28, 1840. Being the same property which was conveyed to The Metropolitan Traction Company of New York by John D. Crimmins by deed dated September 29, 1892, and recorded in the office of the Register of the City and County of New York on November, 29, 1892, in Block Series (Conveyances), Section 1, Liber 10, page 472, and indexed

under Block Number 4, and which was conveyed to the Metropolitan Street Railway Company by deed dated September 11, 1896, and recorded in said Register's Office on September 28, 1897, in Block Series (Conveyances), Section 1, Liber 43, page 361, and indexed under Block Number 4.

NINTH AVENUE PROPERTY.

All those forty certain lots and parts of lots or gores of land, situate, lying and being in the City of New York, in the Twenty-second Ward of said city, which, taken together as one parcel, are bounded and described as follows, viz: Beginning at a point on the easterly side of line of Ninth Avenue which is distant sixty-five (65) feet northerly from the northerly line of Fifty-third Street; running thence northerly along said easterly line of Ninth Avenue one hundred thirty-five (135) feet ten (10) inches, to the southerly line of Fifty-fourth Street; thence easterly along said southerly line of Fifty-fourth Street, five hundred twenty five (525) feet and to point distant two hundred seventy-five (275) feet westerly from the point of intersection of the southerly line of Fifty-fourth Street with the westerly line of Eighth Avenue; thence southerly on a line at right angles with the said southerly line of Fifty-fourth Street one hundred sixty-five (165) feet eleven and three-eighths (11 3/8) inches; thence in a northwesterly direction eighty-one (81) feet two (2) inches, to a point distant thirty-eight (38) feet two (2) inches, north of Fifty-third Street; thence westerly eighty-two (82) feet to a point forty-nine (49) feet north of Fifty-third Street; thence westerly one hundred twenty nine (129) feet one (1) inch to a point distant fifty-two (52) feet north of Fifty-third Street; thence westerly one hundred forty-one (141) feet to a point distant fifty-one (51) feet eight inches (8) north of Fifty-third Street; thence westerly sixty-one (61) feet five (5) inches, to a point distant fifty-six (56) feet five (5) inches, north of Fifty-

third Street; thence westerly thirty-one (31) feet four (4) inches to the easterly line of Ninth Avenue at the point or place of beginning; together with all the buildings and erections now existing thereon; being part of the premises conveyed to John D. Crimmins by the Eighth Avenue Railroad Company, a corporation created and existing under the laws of the State of New York, by deed dated July 19, 1892, and recorded in the Office of the Register of the City and County of New York on August 3, 1892, in Block Series (Conveyances) Section 4, Liber 17, page 78; and by said John D. Crimmins conveyed to The Metropolitan Traction Company of New York by deed dated September 29, 1892, and recorded in said Register's Office on September, 29, 1892, in Block Series (Conveyances) Section 4, Liber 18, page 138, and indexed under Block Numbers 1044 and 1045; and by said Metropolitan Traction Company to the Metropolitan Street Railway Company by deed dated September, 11, 1896, and recorded in the office of the Register of the City and County of New York, on September 28, 1897, in Block Series (Conveyances), Section 4, Liber 62, page 11, and indexed under Block Numbers 1044 and 1045 on the Land Map of the City of New York; subject to a certain mortgage dated July 19, 1892, made by John D. Crimmins to The Eighth Avenue Railroad Company, to secure the payment of the sum of Two hundred and fifty thousand dollars ($250,000) and interest, on which $50,000 has been paid.

FIFTY-THIRD STREET PROPERTY.

All that certain gore, lot, piece or parcel of land with the building thereon situate, lying and being on the northerly side of Fifty-third Street in the City of New York, in the Twenty-second Ward of said City, and bounded and described as follows: Beginning at a point on the northerly side of Fifty-third Street at a point distant

four hundred thirty four (434) feet eleven (11) inches easterly from the corner formed by the intersection of the easterly side of Ninth Avenue with the northerly side of Fifty-third street; running thence northerly and parallel with Ninth Avenue thirty-nine (39) feet three and one half (3½) inches or thereabouts to the southerly line of lands formerly of Jacob Harsen; thence easterly along the said line of lands formerly of Jacob Harsen, twenty-five (25) feet or thereabouts, thence southerly and again parallel with Ninth Avenue thirty-seven (37) feet five and one-eighth (5⅛) inches or thereabouts to the northerly side of Fifty-third Street, and thence westerly along said northerly side of Fifty-third Street twenty-five feet (25) to the point or place of beginning. Being the same premises conveyed to John D. Crimmins by Margaret F. Miller by deed dated August 3, 1892, and recorded in the office of the Register of the City and County of New York on August 3, 1892, in Block Series (Conveyances) Section 4, Liber 17, page 87, and by the said John D. Crimmins conveyed to The Metropolitan Traction Company of New York by deed dated September 29, 1892, and recorded in the Office of the Register of the City and County of New York on September 29, 1892, in Block Series (Conveyances) Section 4, Liber 18, page 135 and indexed under Block Number 1044 and by said The Metropolitan Traction Company of New York conveyed to the Metropolitan Street Railway Company by deed dated September 15, 1897, and recorded in said Register's office on September 28, 1897, in Block Series (Conveyances) Section 4, Liber 62, Page 9, and indexed under block number 1044.

Also all those certain gore lots, pieces or parcels of land, with the improvements thereon, situate, lying and being in the Twenty-second Ward of the City of New York and bounded and described as follows: Beginning at a point on the northerly side of Fifty-third Street distant two hundred and seventy-five (275) feet westerly from the corner formed by the intersection of the westerly side of Eighth Avenue, with the North-

erly side of Fifty-third Street and running thence westerly along said northerly side of Fifty-third Street sixty-five (65) feet one (1) inch to the Easterly line of a gore lot conveyed to the Metropolitan Street Railway Company by the Metropolitan Traction Company of New York by deed dated September 15, 1897; thence northerly along said easterly line of said gore lot thirty-seven (37) feet five and one eighth ($5\frac{1}{8}$) inches or thereabouts to the southerly line of lands formerly of Jacob Harsen, deceased; thence easterly along said line of lands of Jacob Harsen, deceased sixty-five (65) feet one (1) inch or thereabouts to a point distant two hundred seventy-five (275) feet westerly from Eighth Avenue; and thence southerly on a line parallel with Eighth Avenue thirty-four (34) feet ten and five eighths ($10\frac{5}{8}$) inches to the northerly side of Fifty Third Street to the point or place of beginning. Also, all those certain gore lots, pieces or parcels of land, with the improvements thereon, situate, lying and being in the Twenty-second Ward of the City of New York and bounded and described as follows: Beginning at a point on the northerly side of Fifty-third Street distant four hundred nine (409) feet eleven inches (11) from the corner formed by the intersection of the easterly side of Ninth Avenue with the northerly side of Fifty-third Street; running thence northerly forty-two (42) feet two (2) inches or thereabouts to the southerly line of lands formerly of Jacob Harsen, deceased; thence easterly along said line of lands of Jacob Harsen, deceased, twenty-five (25) feet to the westerly line of a gore lot conveyed to the Metropolitan Street Railway Company by The Metropolitan Traction Company of New York by deed dated September 15, 1897; thence southerly along said westerly line of said gore lot and parallel with Ninth Avenue thirty-nine (39) feet and three and one half inches ($3\frac{1}{2}$) or thereabouts to the northerly side of Fifty-third Street at a point distant three hundred and sixty-five (365) feet one (1) inch westerly from the corner formed by the intersection of the

westerly side of Eighth Avenue with the Northerly side of Fifty-third Street, and thence westerly along said northerly side of Fifty-third Street twenty-five (25) feet to the point or place of beginning; being the premises conveyed to the Metropolitan Street Railway Company by The Metropolitan Traction Company of New York by deed dated September 15, 1897, and recorded in the Office of the Register of the City and County of New York on September 28, 1897, in Block Series (Conveyances) Section 4, Liber 62, page 6, and indexed under Block Number 1044.

TWENTY-THIRD STREET LEASEHOLD.

All those certain lots, pieces and parcels of land in the Sixteenth ward of the City of New York which, taken together, are bounded and described as follows: Beginning at the intersection of the northerly side of West Twenty-third Street with the westerly side of Eleventh Avenue; thence running northerly and parallel with Eleventh Avenue ninety-eight (98) feet nine (9) inches or thereabouts to the half distance line between Twenty-third Street and Twenty-fourth Street; thence westerly and along said half distance line four hundred fifty-two (452) feet seven and one-half ($7\frac{1}{2}$) inches or thereabouts to the easterly line of Thirteenth Avenue; thence southeasterly and parallel with Thirteenth Avenue one hundred one (101) feet four (4) inches or thereabouts to a point formed by the intersection of the easterly line of Thirteenth Avenue with the northerly line of Twenty-third Street; thence easterly and parallel with Twenty-third Street four hundred thirty (430) feet or thereabouts to the point or place of beginning.

B. Real estate subject to the Metropolitan Street Railway Company's general and Collateral trust Mortgage.

Ninety-sixth Street and First Avenue Property.

All that certain block, piece or parcel of land with the buildings and improvements thereon, situate, lying and being in the Twelfth Ward of the City of New York and bounded and described as follows, viz.: Northerly by the middle line of Ninety-sixth Street; southerly by the middle line of Ninety-fifth Street; westerly by the middle line of First Avenue, and easterly, by the East or Harlem River. And also the land under water, and all preemptive rights in, upon and under the East or Harlem River, lying in front of the above described block; being the premises conveyed by Daniel B. Hasbrouck and Sarah Hasbrouck, his wife, to the Metropolitan Street Railway Company, by deed dated April 7, 1897, and recorded in the Office of the Register of the City and County of New York, in Block Series (Conveyances), Section 5, Liber 49, page 25, and indexed under Block Number 1575.

Avenue C Depot Property.

All those two certain lots, pieces or parcels of lands, with the buildings and improvements thereon, situate in the Eleventh Ward of the City of New York, and which taken together are bounded and described as follows: Beginning on the northerly line or side of Eleventh Street, distant one hundred eighty-three (183) feet easterly from the corner formed by the intersection of the northerly side of Eleventh Street with the easterly side of Avenue C, as the same is now laid out and widened, which said widening was not noted or allowed for on the map hereinafter mentioned, and running thence northerly and parallel with Avenue C one hundred three (103) feet three (3)

inches to the centre line of the block between Eleventh Street and Twelfth Street; thence easterly along said centre line of the block and parallel with Eleventh Street fifty (50) feet; thence southerly and parallel with Avenue C one hundred three (103) feet three (3) inches to the northerly side or line of Eleventh Street, and thence westerly along the same fifty (50) feet to the point or place of beginning.

All that certain lot, piece or parcel of land with the buildings thereon erected, situate, lying and being in the Eleventh Ward in the City of New York, and bounded and described as follows: Beginning at a point on the northerly side of Tenth Street, distant two hundred thirty-three (233) feet easterly from the northeasterly corner of Tenth Street and Avenue C, and thence northerly and parallel with Avenue C eighty (80) feet to the point or place of beginning, running northerly from that point and parallel with Avenue C fourteen (14) feet nine (9) inches; thence easterly and parallel with Tenth Street twenty-five (25) feet; thence southerly and again parallel with Avenue C fourteen (14) feet nine (9) inches; thence westerly and again parallel with Tenth Street, Twenty-five (25) feet, to the point or place of beginning.

All that certain piece of land, with the buildings thereon situate, lying and being in the Eleventh Ward of the City of New York on the northerly side of Tenth Street and beginning at a point two hundred eight (208) feet distant easterly from the northeasterly corner of Tenth Street and Avenue C, and running thence easterly along the northerly side of Tenth Street twenty-five feet (25) thence northerly on a line parallel with Avenue C ninety-four (94) feet nine and one-half (9½) inches, to the centre line of the block between Tenth Street and Eleventh Street; thence westerly on a line parallel with Tenth Street twenty-five (25) feet; thence southerly on a line parallel with Avenue C ninety-four (94) feet nine and one-half (9½) inches, to Tenth Street, aforesaid, the place of beginning.

Also, six other lots, pieces and parcels of ground and premises, with the buildings thereon, situate, lying and being in the Eleventh Ward of the City of New York and bounded and described as follows: Beginning at a point on the southerly side of Eleventh Street distant one hundred eight (108) feet easterly from the southeasterly corner of Avenue C and Eleventh Street; and running thence easterly and along the southerly side of Eleventh Street seventy-five (75) feet; thence southerly and parallel with Avenue C one hundred eighty-nine (189) feet seven (7) inches, more or less, to the northerly side of Tenth Street; thence westerly and along the northerly side of Tenth Street seventy-five (75) feet, and thence northerly and parallel with the Avenue C one hundred eighty-nine (189) feet seven (7) inches, more or less, to the place of beginning.

All those two certain lots, pieces or parcels of land, with the buildings thereon, situate, lying and being on the northerly side of Eleventh Street, in the Eleventh Ward of the City of New York, and known and distinguished on a certain map filed by Frederick De-Puyster, Master in Chancery in the office of the Register of the City and County of New York, entitled "map of two hundred and forty lots of land situate at Burnt Mill Point in the Eleventh Ward of the City of New York," by the numbers Eighty-five (85) and Eighty-six (86) and more fully bounded and described as follows: Beginning at a point on the northerly side of Eleventh Street in said city, distant two hundred thirty-three feet (233) easterly from the northeasterly corner of Avenue C and Eleventh Street, running thence northerly and parallel with Avenue C one hundred three (103) feet three (3) inches; thence easterly and parallel with Eleventh Street fifty (50) feet; thence southerly and parallel with Avenue C one hundred three (103) feet three (3) inches to Eleventh Street, and thence westerly along Eleventh Street fifty (50) feet to the place of beginning. Also, all those four certain lots, pieces or parcels of land situate, lying and being

in the Eleventh Ward of the City of New York, bounded and described as follows: Beginning at a point on the southerly side of Eleventh Street distant one hundred eighty-three (183) feet easterly from the easterly line of Avenue C, running thence southerly and parallel with Avenue C ninety-four (94) feet nine (9) inches to the centre line of the block, running thence easterly alone said centre line one hundred (100) feet; thence northerly and parallel with Avenue C ninety-four (94) feet nine (9) inches to the southerly line or side of Eleventh Street; thence westerly along the southerly line of Eleventh Street one hundred (100) feet to the place of beginning;

No. 413 East Tenth Street Property.

All that certain lot, piece or parcel of ground, with the building thereon erected, which on a certain map filed by Frederick De Puyster, Master in Chancery (with his certificate endorsed thereon, dated February 1, 1837) in the office of the Register of the City and County of New York, entitled "Map of 240 lots of lands situated at Burnt Mill Point in the Eleventh Ward of the City of New York," consisting of one lot of land thereon designated by the number "144" (one hundred and forty-four), bounded as follows, viz: Commencing at a point on the northerly side of Tenth Street, distant one hundred and ninety-three (193) feet southeasterly from the northeasterly corner of Avenue C and Tenth Street; running thence northeasterly along lot 145 on said map ninety-four (94) feet nine (9) inches to the centre of the block; thence southeasterly along the centre of the block twenty-five (25) feet to lot 143 on said map; thence southwesterly along said lot 143 ninety-four (94) feet nine (9) inches to Tenth Street, and thence northwesterly along Tenth Street twenty-five (25) feet to the point of beginning.

LENOX AVENUE AND ONE HUNDRED AND SIXTEENTH STREET PROPERTY.

All those certain lots, pieces or parcels of land situate, lying and being in the Twelfth Ward of the City of New York, and which taken together are bounded and described as follows: Commencing at the corner formed by the intersection of the northerly line of One hundred and sixteenth Street with the westerly side of Lenox Avenue (formerly Sixth Avenue), running thence northerly along said westerly line of Lenox Avenue two hundred one (201) feet ten (10) inches to the southerly line of One hundred and seventeenth Street; thence westerly along said southerly line of One hundred and seventeenth Street two hundred (200) feet; thence southerly and parallel with Lenox Avenue Two hundred one (201) feet ten (10) inches to the northerly line of One hundred and sixteenth Street; thence easterly along said northerly line of One hundred and sixteenth Street two hundred (200) feet to the point or place of beginning. Being the same premises conveyed by The Metropolitan Traction Company of New York to the Lexington Avenue and Pavonia Ferry Railroad Company by deed dated January 15, 1894, and recorded in the office of the Register of the City and County of New York in Block Series (Conveyances) Section 7, Liber 20, at page 456 and indexed under Block Number 1901, subject, however, to the existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

LEXINGTON AVENUE AND NINETY-NINTH STREET PROPERTY.

All that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of New York, and bounded and described as follows: Beginning at the northeasterly corner of Fourth Avenue and Ninety-ninth Street, running thence northwardly along the easterly line of Fourth Avenue two hundred one (201) feet ten (10) inches to the southerly

line of One hundredth Street; thence eastwardly along the southerly line of One hundredth Street four hundred five (405) feet; thence southwardly and parallel with Fourth Avenue two hundred one (201) feet ten (10) inches to the northerly line of Ninety-ninth Street; and thence westwardly along the northerly line of Ninety-ninth Street four hundred five (405) feet to the point or place of beginning. Being the same premises conveyed by The Metropolitan Traction Company of New York to the Lexington Avenue and Pavonia Ferry Railroad Company by deed dated January 15, 1894, and recorded in the office of the Register of the City and County of New York, in Block Series (Conveyances), Section 6, Liber 22, page 157, and indexed under Block Number 1627. Subject, however, to the existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

LEXINGTON BUILDING.

All those certain lots, pieces or parcels of land with the building or buildings thereon erected, situate, lying and being in the Twelfth Ward of the City of New York, bounded and described as follows: Commencing on the northerly side of Twenty-fifth Street, at a point distant one hundred seven (107) feet six (6) inches westerly from the corner formed by the intersection of the northerly line of Twenty-fifth Street with the westerly line of Third Avenue, and running thence westerly along the northerly line of Twenty-fifth Street, one hundred eighty-seven (187) feet six (6) inches or thereabouts, and thence running northerly and parallel, or nearly so, with Third Avenue one hundred ninety-seven (197) feet five (5) inches to the southerly side of Twenty-sixth Street and thence running easterly along the southerly side of Twenty-sixth Street one hundred eighty-six (186) feet, or thereabouts, and thence running southerly and parallel with Third Avenue ninety-eight feet nine (9) inches to the centre line of the block between Twenty-fifth and

Twenty-sixth Streets, and thence running easterly along the said centre line of the block one (1) foot six (6) inches, thence running southerly and parallel with Third Avenue, ninety-eight (98) feet nine (9) inches to the northerly line of Twenty-fifth Street, being the same premises which were heretofore conveyed by the following conveyances, viz:

Deed of Ruth A. Brown to the Metropolitan Traction Company of New York, dated May 31, 1894, and recorded in the Office of the Register of the City and County of New York on June 4, 1894, in Block Series (Conveyances) Section 3, Liber 30, page 128 and indexed under Block Number 881. Deeds of John D. Crimmins to The Metropolitan Traction Company of New York, dated respectively July 13, 1893, February 21, 1894, and August 31, 1894, and respectively recorded in said Register's Office on July 24, 1893, March 5, 1894, and October 18, 1894, in Block Series (Conveyances) Section 3, Liber 21, page 408, Liber 26, page 113 and Liber 31, page 57 and all indexed under Block Number 881. Deed of Alonzo C. Munson to The Metropolitan Traction Company of New York, dated June 15, 1894, and recorded in said Register's Office on June 18, 1894, in Block Series (Conveyances) Section 3, Liber 29, page 176 and indexed under Block Number 881.

Subject, however, to an existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

Belt Line Repair Shops.

All that certain lot, piece or parcel of land, together with the buildings and improvements thereon lying and being in the Twenty-Second Ward of the City of New York, situate on the north side of West fifty-third Street between Tenth and Eleventh Avenues, and known as lot number 768 on a certain map of John Hopper's Estate, filed in the Register's Office of the City of New York on December 31, 1864, as Map No.

660 and being bounded and described as follows: Beginning at a point on the northerly side of Fifty-third Street distant four hundred seventy-five (475) feet westwardly from the westerly side of Tenth Avenue, and running thence westwardly along said northerly side of Fifty-third Street twenty-five (25) feet; thence northerly on a line parallel with Tenth Avenue forty-eight (48) feet three and three-quarters (3¾) inches, thence southwesterly twenty-five (25) feet or thereabouts to a point on a line distant forty-four (44) feet ten (10) inches northerly from the northerly side of Fifty-third Street, and thence southerly on a line parallel with Tenth Avenue forty-four (44) feet ten (10) inches to the northerly side of Fifty-Third Street to the point or place of beginning. Being the same premises conveyed to The Metropolitan Traction Company of New York by Bertha Volkenning by deed dated March 30,1893, and recorded in the office of the Register of the City and County of New York on March 30, 1893, in Block Series (Conveyances) Section 4, Liber 21, page 283.

And also all those certain lots, pieces or parcels of land, together with the buildings and improvements erected thereon, situate, lying and being in the Twenty-second Ward of the City of New York and bounded and described as follows: Beginning at a point three hundred (300) feet easterly from the southeasterly corner of Eleventh Avenue and Fifty-fourth Street; thence easterly along the line of Fifty-fourth Street twenty-five (25) feet; thence southerly parallel with Eleventh Avenue, through the centre of the block to the line of property now or formerly owned by Garrit H. Striker one hundred fifty-six (156) feet; thence northwesterly along the line of said property twenty-five (25) feet three and one-quarter (3¼) inches; thence northerly parallel to Eleventh Avenue one hundred fifty-two (152) feet six and one quarter (6¼) inches, to the point or place of beginning, be the said several dimensions more or less. Being the same premises conveyed by Andrew Doerrschuck and Annie, his wife,

to The Metropolitan Traction Company, of New York, by deed dated March 6, 1893, and recorded in the Office of the Register of the City and County of New York on March 8, 1893, in Block Series (Conveyances) Section 4, Liber 20, page 296 and indexed under Block Number 1082.

CHAMBERS STREET LEASEHOLD.

All the leasehold rights of the Metropolitan Street Railway Company in and to all that certain lot, piece or parcel of land situate, lying and being in the Seventh Ward of the City of New York, bounded and described as follows: Beginning at the corner formed by the intersection of the southerly line of Cherry Street with the westerly line of East Street, and running thence southerly along the westerly line of East Street one hundred (100) feet three (3) inches; thence westerly on a line parallel or nearly so with the southerly line of Cherry Street two hundred forty-five (245) feet six (6) inches; thence northerly on a line parallel or nearly so with the westerly line of East Street twenty-six (26) feet one (1) inch; thence easterly parallel or nearly so with said line of Cherry Street nineteen (19) feet eleven (11) inches; thence northerly parallel or nearly so with the said line of East Street seventy-five (75) feet to the said line of Cherry Street; thence easterly along said last mentioned line two hundred twenty-five (225) feet to the place of beginning, and known by the Street Number 505 Cherry Street. Also all the leasehold rights of the Metropolitan Street Railway Company in and to all that certain lot, piece or parcel of land situate, lying and being on Cherry Street in said City immediately adjoining the above described premises on the westerly side thereof, which said lot is about twenty (20) feet in width in front and rear and seventy-five (75) feet in depth on each side.

TWENTY-FOURTH STREET LEASEHOLD.

All the leasehold rights of the Metropolitan Street Railway Company in and to all those ten certain lots of ground, situate, lying and being in the Sixteenth Ward of the City of New York, distinguished on a map of certain lands of Clement C. Moore, situate at Greenwich, in the City of New York, recorded in the Office of the Register of the City and County of New York, in Liber 634 of Conveyances, page 411, by the numbers 905 (nine hundred and five) to (nine hundred and eight) 908 and 936 (nine hundred and thirty-six) to 941 (nine hundred and forty-one) all inclusive; and bounded together as follows, viz: Southeastwardly in front by Eleventh Avenue; southwestwardly by the half distance line between Twenty-third Street and Twenty-fourth Street, northwestwardly by lot numbered on the said map 935 (nine-hundred and thirty-five) and northeastwardly by the said Twenty-fourth Street. Containing together in width along the said Eleventh Avenue and on the northwestwardly side thereof, ninety-eight (98) feet eight (8) inches, and on the northeastwardly and southwestwardly sides thereof, two hundred twenty-five (225) feet be the said several measurements more or less.

III.

STREET SURFACE RAILROADS AND RAILROAD ROUTES IN THE COUNTY OF NEW YORK, CITY OF NEW YORK, AND STATE OF NEW YORK, OPERATED BY THE METROPOLITAN STREET RAILWAY COMPANY AS LESSEE, UNDER THE LEASES HEREINAFTER MENTIONED:

LINES LEASED TO AND OPERATED BY METROPOLITAN STREET RAILWAY COMPANY.

Lease of the Bleecker Street and Fulton Ferry Railroad Company to the Twenty-third Street Railway Company.

Dated January 10, 1876, by which all the railroads and railroad routes of the lessor in the City of New

York are leased to the lessee for the term of ninety-nine years, said lease including the railroad operated along the streets described as follows: Commencing at Twenty-third Street and Eleventh Avenue, running along Eleventh Avenue to Fourteenth Street to Fourth Avenue; and also commencing at the intersection of Fourteenth Street and Hudson Street and thence running southerly and easterly through the city upon various streets, to Fulton Ferry.

Lease of The Broadway and Seventh Avenue Railroad Company to The Houston, West Street and Pavonia Ferry Railroad Company.

Dated May 13, 1890, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor and any extensions of said charter, said lease including the railroad operated along the streets, described as follows: Commencing at Fifty-ninth Street and Seventh Avenue; running thence through and along Seventh Avenue to Broadway; thence through and along Broadway to Fifteenth Street; and thence through and along University Place and certain other streets to Barclay Street; and thence through Barclay Street and Park Place to Broadway; and through Seventh Avenue, from Broadway to Greenwich Avenue to Macdougal Street to West Fourth Street, and through Thompson and Sullivan Streets to West Broadway; and also from Broadway and Twenty-third Street, through Twenty-third Street to Lexington Avenue, thence through Lexington Avenue to Twenty-seventh Street.

Lease of the Central Park, North and East River Railroad Company to The Metropolitan Cross-Town Railway Company and the Houston, West Street and Pavonia Ferry Railroad Company.

Dated October 14, 1892, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of

the charter of the lessor and any extensions of said charter, said lease including the railroad operated along the streets described as follows: From Tenth Avenue and Fifty-ninth Street through Tenth Avenue, West Street and other streets to the South Ferry; and also from Tenth Avenue at Fifty-ninth Street along Fifty-ninth Street to First Avenue; and thence through various other streets and avenues to the said South Ferry.

Lease of the Eighth Avenue Railroad Company to Metropolitan Street Railway Company.

Dated November 23, 1895, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of ninety-nine years from January 1, 1896, said lease including the railroad operated along the streets described as follows: Commencing at or near the intersection of Vesey Street and Broadway, thence running through Vesey Street to College Place, and through College Place, Church Street and Chambers Street to West Broadway and through West Broadway to Canal Street, and through Canal Street to Hudson Street, and through Hudson Street to Eighth Avenue, and through and along Eighth Avenue to the point where the street or road commonly called the McCombs Dam Road intersects or meets Eighth Avenue; thence through and along the said McCombs Dam Road to or near the westerly end of the bridge known as McCombs Dam Bridge, with an extension or branch running from the junction of West Broadway and Canal Street to Broadway, and also the extension of its railroad from the junction of McCombs Dam Road along Eighth Avenue to the Harlem River.

Lease of The Forty-second Street and Grand Street Ferry Railroad Company to the Metropolitan Crosstown Railroad Company and The Houston, West Street and Pavonia Ferry Railroad Company.

Dated April 6, 1893, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor and any extensions of the charter, said lease including the railroad operated along the streets described as follows: Commencing at the ferry at the western extremity of Forty-second Street; thence through and along Forty-second Street, with a double track to Tenth Avenue; through and along Tenth Avenue to Thirty-fourth Street; through and along Thirty-fourth Street, with a double track, to Broadway; through and along Broadway to Twenty-third Street; through and along Twenty-third Street to Fourth Avenue; through and along Fourth Avenue and Union Square, with a double track, to Fourteenth Street; through and along Fourteenth Street, with a double track to Avenue A; through and along Avenue A, with a double track, to Second Street, and thence along Avenue A, with a single track, to First Street; through and along First Street to Houston Street, with a single track, to Cannon Street; through and along Cannon Street, with a single track, to Grand Street; through and along Grand Street, with a single track, to Goerck Street, and thence through and along Grand Street, with a double track, to Grand Street Ferry, at the foot of Grand Street, East River; and also from the intersection of Second Street and Avenue A through and along Second and Houston Streets, with a single track to Goerck Street; thence through and along Goerck Street, with a single track, to Grand Street to Grand Street Ferry.

Lease of The New York and Harlem Railroad Company (city line) to the Metropolitan Street Railroad Company.

Dated June 11, 1896, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of nine hundred and ninety-nine years from July 1, 1896; said lease including the railroad operated along the streets described as follows:

Commencing at intersection of Park Row, Ann Street and Broadway, to Centre Street, to Grand Street and Broome Street to Bowery, to Fourth Avenue, to Forty-second Street, to Madison Avenue, to One hundred and thirty-eighth Street; also on Eighty-sixth Street from Madison Avenue to First Avenue; on First Avenue to Ninety-third Street to Astoria Ferry; also extension on Thirty-second and Thirty-third Streets, Lexington Avenue and Thirty-fourth Street, from Fourth Avenue to Thirty-fourth Street Ferry.

Lease of The Ninth Avenue Railroad Company to The Houston, West Street and Pavonia Ferry Railroad Company.

Dated March 12, 1892, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of ninety-nine years, said lease including the railroad operated along the streets described as follows: Commencing at the intersection of Broadway and Fulton Street, running through Fulton Street to Greenwich Street; thence through and along Greenwich Street to Ninth Avenue; thence through and along Ninth Avenue and Columbus Avenue to the Grand Boulevard; thence through and along the said Boulevard to Amsterdam Avenue (formerly Tenth Avenue), and thence along Amsterdam Avenue to Manhattan Street, returning through Amsterdam Avenue, the Boulevard, Columbus Avenue, Ninth Avenue, Gansevoort Street and Washington Street to Fulton Street; thence through Fulton Street to Broadway to the place of beginning; also on

Fifty-third Street from Seventh Avenue to Ninth Avenue.

Lease of The Second Avenue Railroad Company to Metropolitan Street Railway Company.

Dated January 28, 1896, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor and any extensions of said charter, said lease including the railroad operated along the streets described as follows: Upon First Avenue and Second Avenue, through various streets and avenues in the City of New York from the Harlem River to Peck Slip, with extensions and connections from Eighth Avenue through the transverse road in Central Park, along Eighty-fifth Street, connecting with Madison Avenue. Also an extension from Bowery through Worth Street to Broadway. Also an extension from Second Avenue and Tenth Street, through Tenth Street and Astor Place to Broadway.

Lease of Sixth Avenue Railroad Company to The Houston, West Street and Pavonia Ferry Railroad Company.

Dated February 1, 1892, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of eight hundred years, said lease including the railroads operated along the streets described as follows: Commencing at the intersection of Fifty-ninth Street and Sixth Avenue, running thence southerly along Sixth Avenue to Carmine Street; thence through Carmine Street to Varick Street; thence through Varick Street to Canal Street; thence through Canal Street to West Broadway; and also from the intersection of West Broadway and Canal Street, thence through and along West Broadway to Vesey Street; thence through Vesey Street to Broadway; and also through Church Street to Chambers Street, and through Chambers Street to Broadway; and also upon and along Lenox Avenue

from One hundredth and Tenth Street to the Harlem River, also on West Third Street from Carmine to Sullivan Streets. Also on Fifty-third Street from Sixth Avenue to Seventh Avenue.

Lease of the Twenty-Third Street Railway Company to The Houston, West Street and Pavonia Ferry Railroad Company.

Dated April 25, 1893, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor, and any extensions of said charter, said lease including the railroad operated along the streets described as follows: Upon Twenty-third Street from the North River to the East River, and upon Second Avenue from its intersection with Twenty-third Street to Twenty-ninth Street, and thence through Twenty-ninth Street, and also through Twenty-eighth Street to First Avenue, and thence through First Avenue to Thirty-fourth Street.

Lease of the Third Avenue Railroad Company to Metropolitan Street Railway Company.

Dated April 13, 1900, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of nine hundred and ninety-nine years, said lease including the railroad operated along the streets described as follows: Beginning at the intersection of Park Row and Broadway; thence extending along Park Row, the Bowery, Third Avenue to the Harlem River; also extending from the North River at the foot of One hundred and thirtieth Street, thence through One hundred and thirtieth Street, Manhattan Street and One hundred and twenty-fifth Street to the East River; also extending from One hundred and twenty-fifth Street, through Amsterdam Avenue to the terminus of said Avenue; and also on One Hundred and thirtieth Street from Third Avenue to a point at or near Lexington Avenue.

Together with all and singular the improvements on said properties, and all and singular the railroads, lands, buildings, structures, fixtures, privileges, franchises, rights of way, trackage rights, contracts, consents, leaseholds, easements and other rights and interests then owned by the Metropolitan Street Railway Company; also all and singular the tracks, side tracks or sidings, switches, rails, bridges, fences, buildings, depots, station-houses, power-houses, car-houses, machine shops, repair shops and other shops, and all other buildings, improvements, erections and structures, and all dynamos, belting, engines, boilers, regulators, meters, poles, trolleys, conduits, feeders, cables, wires, switchboards, lamps and machinery for producing, generating and distributing electricity or power; and also all and singular the rolling stock, equipment, motors, engines, tenders, carriages, cars, trucks, horses, harness, tools, implements, furniture, fixtures, machinery, materials, coal, wood, oil, fuel and other supplies; and also all maps, drawings, profiles, licenses, records, deeds, contracts and agreements, patents and patented inventions and processes then owned by the Metropolitan Street Railway Company, all of which personal property was thereby declared to be fixtures and appurtenances of said railroads; and also all then present or future improvements and additions made or to be made upon and to any or all of said railroads or property, real and personal, and any and all equipment therefor and renewals or replacements of the same or of any part thereof or of the appurtenances; and also all and every other railroad, which the Metropolitan Street Railway Company should thereafter acquire or construct by means of the proceeds of any of the bonds thereby secured, and all power-houses, real estate, equipment and other property, real or personal, appurtenant thereto.

And all and singular the tolls, fares, rents, issues earnings, income, profits and other benefits and advantages of, or in any wise growing out of, all or any of the said several railroads, franchises and property,

and all and singular the tenements, hereditaments and appurtenances to any of the said railroads or property belonging, or in any wise appertaining, and the reversion or reversions, remainder or remainders thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well at law as in equity, of the Metropolitan Street Railway Company, in and to the same and every part and parcel thereof with the appurtenances.

IV.

AND ALSO ALL THE RIGHT, TITLE AND INTEREST of the Metropolitan Street Railway Company in and to the following shares of stock which were then pledged and deposited with the Guaranty Trust Company of New York under the mortgage dated February 1, 1897, from the Metropolitan Street Railway Company to said Guaranty Trust Company of New York, as Trustee, securing the General Mortgage and Collateral Trust Five Per Cent. Gold Bonds of the Metropolitan Street Railway Company, viz:

1. Fourteen thousand (14,000) shares of the capital stock of The Broadway and Seventh Avenue Railroad Company of the par value of one hundred dollars ($100) each.

2. Four thousand (4,000) shares of the capital stock of the Forty-second Street and Grand Street Ferry Railroad Company of the par value of one hundred dollars ($100) each.

3. Three thousand (3,000) shares of the capital stock of the Central Park, North and East River Railroad Company of the par value of one hundred dollars ($100) each.

4. Nine thousand, nine hundred (9,900) shares of the capital stock of the Thirty-fourth Street Cross-Town Railway Company, of the par value of one hundred dollars ($100) each.

To have and to hold the said described premises and

property unto your orator, its successors in the trust, its or their assigns, in trust for the equal and proportionate benefit and security of all holders of the bonds and coupons issued and to be issued and secured by said mortgage and for the enforcement of the payment of the said bonds and interest when payable according to the tenor, purport and effect of such bonds and coupons and to secure the performance and observance of and compliance with the covenants and conditions of the said indenture, without preference, priority or distinction as to lien or otherwise of one bond over any other bond by reason of priority in the issue, sale or negotiation thereof or by reason of the purpose of its issue as in said mortgage or deed of trust more fully set forth. A copy of this mortgage marked Exhibit "A" is filed herewith and your orator prays leave to refer to the same as if it were fully set forth in this bill of complaint. Said mortgage was duly recorded in the office of the Register of the County of New York in which the property thereby mortgaged was situated. Your orator duly accepted the trusts therein created and it was and now is fully authorized and empowered to take and hold in trust the property conveyed to it therein and to execute the trusts reposed in it under and by virtue of the provisions thereof.

V. After the execution and delivery of said mortgage the Metropolitan Company duly made and executed bonds of the issue described in said mortgage of the aggregate par value of Sixteen million six hundred and four thousand dollars ($16,604,000.) all of which bonds were duly certified by your orator in all respects as provided in said mortgage, and all of said bonds, as your orator is informed and believes, were duly issued by the Metropolitan Company for a valuable consideration and in accordance with the provisions of said mortgage and said bonds are now outstanding in the hands of divers persons and corporations who are now the owners and holders thereof for value and your orator is advised and avers that said bonds so issued as aforesaid are now in all respects valid outstanding

obligations of the defendant Metropolitan Company and entitled to the benefit and security of the said mortgage.

VI. Certain of the bonds so issued as aforesaid were certified and delivered by your orator and issued in accordance with the provisions of subdivision (2) of Article Second of said mortgage against the deposit with your orator as security for the bonds issued and to be issued under said mortgage of the following securities, viz.:

First Mortgage Five Per Cent Bonds of The Broadway and Seventh Avenue Railroad Company due June 1, 1904	$1,497,000.00
Consolidated Mortgage Seven Per Cent Bonds of the Central Park North and East River Railroad Company due December 1, 1902	1,200,000.00
Second Mortgage Five Per Cent Bonds of The Broadway Surface Railroad Company due July 1, 1905	1,000,000.00
Five Per Cent Bonds of The Metropolitan Crosstown Railway Company due May 1, 1901	300,000.00
First Mortgage Six Per Cent Extended Bonds of the Twenty-third Street Railway Company due January 1, 1909	250,000.00
First Mortgage Six Per Cent Extended Bonds of the Forty-second Street and Grand Street Ferry Railroad Company, due January 1, 1909	$236,000.00
Five Per Cent Debenture Bonds of the Twenty-third Street Railway Company due January 1, 1906	150,000.00
Bond of John D. Crimmins due August 1, 1897, secured by mortgage to The Eighth Avenue Railroad Company	200,000.00
Bond of John D. Crimmins due February 20, 1894, secured by mortgage to The Mutual Life Insurance Company of New York	150,000.00

Said securities so deposited with your orator ever since have been and now are held in trust by it subject to the trusts declared in said mortgage as additional security for the payment of the bonds issued thereunder.

VII. Your orator further shows that as it is informed and believes, simultaneously with or immediately prior to the execution and delivery of the said mortgage, Exhibit "A" filed herewith, the Metropolitan Company executed and delivered a certain Indenture of Lease dated February 14, 1902, between the Metropolitan Company and the defendant the New York Company, then known as Interurban Street Railway Company, under and by virtue of the provisions of which the said Metropolitan Company did grant, lease and demise to the said Interurban Street Railway Company for the full term of Nine hundred and ninety-nine years from February 24, 1902, all its railroads and railroad routes and all its real estate and the buildings and improvements thereon, and all its leasehold interests and leased lines, including all the street surface railroads and real estate owned by it, and all the street surface railroads and railroad routes operated by it as lessee which are described in the said mortgage or deed of trust, Exhibit "A" filed herewith and which were conveyed to your orator subject to the Trusts thereof.

The said lease provided that all income which the lessor should receive or be entitled to receive from any of its leased lines or from any stocks, bonds or other securities now or thereafter held by it and from every other source whatsoever, should be the property of the lessee; and the said lease further provided that the lessee should, from time to time, pay or cause to be paid all rentals and other sums of money which were or might be or become due or payable under or by reason of any leases and other contracts to which the lessor was a party or to which any of the demised property was or might be subject and the lessee agreed

to pay all interest upon the funded debt of the lessor and other fixed charges of the lessor.

Said lease further provided that the lessee should pay all interest upon all bonds of the lessor thereafter to be issued in accordance with the provisions of the lease.

Your orator alleges on information and belief, that all the bonds issued under said mortgage, Exhibit "A" filed herewith, were issued by the Metropolitan Company in accordance with the provisions of said lease and with the consent of the New York Company, and in and by said indenture of lease the New York Company did agree to pay the interest on said bonds. A copy of said lease is filed herewith marked Exhibit "B" and your orator prays leave to refer to the same as if it were fully set forth in this bill of complaint.

Shortly after the execution of said lease, as your orator is informed and believes, the New York Company entered into possession of the said demised railroads and property and has operated the same and has collected the rents and profits thereof until the appointment of its receivers as hereinafter mentioned.

VIII. On or about the 24th day of September, 1907 as your orator is informed and believes, the Pennsylvania Steel Company and The Degnon Contracting Company filed their bill in this Court against the defendant New York Company alleging its insolvency and praying for the appointment of receivers of its property. Thereafter the New York Company filed its answer to said bill admitting the allegations thereof and thereupon and on or about September 24, 1907 by order of this Court, the above named defendants Adrian H. Joline and Douglas Robinson were appointed receivers of the said defendant New York Company and of all its property, wherever situated, and they were thereby authorized, empowered and instructed among other things, to enter upon and take possession of all such property and to manage, operate and control the same.

Thereafter, as your orator is informed and believes, the said Adrian H. Joline and Douglas Robinson, appointed receivers as aforesaid, duly qualified as such receivers and as such receivers entered upon and took possession of the property of the said defendant New York Company, including the property which is described in the said mortgage dated March 21, 1902, and was conveyed to your orator subject to the trusts thereof, and they have used and operated the same and are now, as such receivers, in possession of said property.

Your orator files herewith a copy of said bill and answer and order marked Exhibit "C" and prays leave to refer thereto for a precise statement of the contents thereof.

IX. Your orator further alleges, as it is informed and believes, that thereafter the Metropolitan Company presented its duly verified petition to this Court wherein it prayed that it might become a party defendant to said suit of The Pennsylvania Steel Company and The Degnon Contracting Company against the New York Company and that the receivership under the Bill of Complaint in the said cause be extended so as expressly to embrace the interests of the Metropolitan Company in said property.

Thereafter and on October 1, 1907, by an order of this Court, the Metropolitan Company was made a party defendant in said cause and the receivership in said cause was extended to the properties of the Metropolitan Company as prayed in said petition and the said Adrian H. Joline and Douglas Robinson theretofore appointed receivers in said cause, were appointed receivers of the properties of the Metropolitan Company.

Thereafter and on October 1, 1907, as your orator is informed and believes, the said Adrian H. Joline and Douglas Robinson duly qualified as such receivers and as such receivers they are now in possession of all the railroads, properties and franchises of the Metropoli-

tan Company described in said Mortgage dated March 21, 1902, both as receivers of the Metropolitan Company and as receivers of the New York Company.

Your orator files herewith a copy of said petition and of said order of this Court marked exhibit "D" and prays leave to refer thereto for a precise statement of the contents thereof.

X. It is alleged in said petition and your orator so charges, that the various lines of railway embraced in said lease to the New York Company, as well the lines owned by the Metropolitan Company as the lines leased to it, are subject to funded indebtedness secured by mortgage which is now outstanding and which so far as not outstanding at the date of the execution and delivery of said lease, has since been created with the consent of said lessee and that failure to meet the interest on such underlying funded indebtedness as such interest matures, will operate also as a default under the mortgage securing the indebtedness the interest on which shall so become in default and will render said mortgage enforceable. Said petition further shows and your orator charges the fact to be that the total amount of such funded indebtedness now outstanding secured by mortgages (exclusive of the bonds issued and secured under the mortgage to your orator dated March 21, 1902) amounts to upwards of Eighty-three million dollars ($83,000,000) and the amount of annual interest charges thereunder amounts to upwards of Three million seven hundred and fifty thousand dollars ($3,750,000).

It is further alleged in said petition and your orator so charges, that by said lease made by the Metropolitan Company to the New York Company, the Metropolitan Company parted with the possession of its entire railroad system; that the Metropolitan Company has no other resources wherewith to meet the fixed charges on the mortgaged indebtedness of its said system so leased, or to meet the accruing rentals of said lines so leased to the Metropolitan Company

or its predecessors and by the Metropolitan Company so leased to the New York Company or to meet judgments for claims for personal injuries or to meet its outstanding obligations for capital expenditures as they mature or to meet other indebtedness or liabilities of the Metropolitan Company than the rentals reserved under said lease made by the Metropolitan Company to the New York Company as part of which said New York Company agreed to pay such fixed charges and such rentals and to perform the other covenants therein contained.

XI. Your orator further shows that in and by said mortgage of the Metropolitan Company to your orator, dated March 21, 1902 and in and by Article Fifth thereof it is among other things, provided that in case in any judicial proceedings by any party other than the trustee under said mortgage, a receiver should be appointed of the Metropolitan Company, or a judgment or order entered for the sequestration of its property, the trustee under said mortgage should be entitled forthwith to exercise the right of entry conferred under said mortgage and also any and all other rights and powers conferred by said mortgage and provided to be exercised by the trustee thereunder upon the occurrence and continuance of default; and that as matter of right the trustee thereunder should, thereupon, be entitled to the appointment of a receiver of the railroads, property and premises thereby mortgaged and pledged and of the tolls, earnings, income, rents, issues and profits thereof with such powers as the Court making such appointment should confer.

XII. Your orator is advised and therefore avers, that by reason of the appointment of receivers of the properties of the Metropolitan Company, as hereinbefore alleged, your orator as Trustee under said mortgage dated March 21, 1902 is forthwith entitled to exercise the right of entry conferred by said mortgage and is entitled to collect and receive all tolls, earnings,

incomes, rents, issues and profits of the mortgaged railroads and premises and every part thereof and is entitled to have the tolls, earnings, income, rents, issues and profits of the mortgaged property applied in accordance with the provisions of the said mortgage to your orator dated March 21, 1902 and to that end as matter of right, is entitled to the appointment of a receiver of the railroads, property and premises thereby mortgaged and pledged and of the tolls, earnings, income, rents, issues and profits thereof.

XIII. Your orator further alleges on information and belief, that unless the earnings, issues and profits of the railroads, properties and premises mortgaged to your orator be applied in accordance with the provisions of said mortgage and unless the fixed charges of the said railroads be paid and the interest on the bonds secured by underlying mortgages on the various portions of the railroad system leased to the New York Company be paid as the same accrues, there is grave danger that the said mortgages or some of them, may be foreclosed and that the security which your orator now has for the protection of the holders of the bonds issued under the said mortgage dated March 21, 1907 may be greatly impaired and the mortgaged property may become disrupted so that the property embraced in said mortgage will be inadequate security for the payment of the said bonds and your orator is advised that it is necessary for the protection of the interests of the holders and owners of the said bonds that a receiver be appointed in this cause of the railroads, property and premises of the Metropolitan Company mortgaged and pledged to your orator by said mortgage dated March 21, 1902 and of the tolls, earnings, income, rents, issues and profits thereof and that unless such receiver be appointed your orator, as Trustee of the bondholders secured by said mortgage will suffer great and irremediable loss.

XIV. Your orator has been requested by persons owning or representing, as your orator is informed and

believes, a large number of the bonds issued under and secured by said mortgage to your orator dated March 21, 1902, to enforce their rights under said mortgage and to exercise the powers conferred upon your orator as Trustee thereunder.

XV. The said property is now in the possession of this Court through its receivers, appointed by its orders as hereinabove set forth, and upon application by your orator leave has been granted to your orator to include as defendants herein the said Adrian H. Joline and Douglas Robinson as receivers of the New York Company and the said Adrian H. Joline and Douglas Robinson as receivers of the Metropolitan Company.

IN CONSIDERATION WHEREOF and for as much as your orator is remediless in the premises according to the strict rules of common law and can only have relief in a Court of Equity where matters of this kind are properly cognizable, your orator therefore prays the aid of this Honorable Court :

1. That the said defendants may be required to make answer respectively unto all and singular the matters hereinbefore stated and charged as fully and particularly as if the same were herein expressed and they thereunto particularly interrogated but not under oath, answer under oath being hereby expressly waived.

2. That said mortgage or deed of trust may be decreed to be a valid lien upon the property therein described.

3. That it may be adjudged and decreed that a right of entry into and upon all the railroads, rolling stock, property, lands, leaseholds, rights, interests, franchises and premises and the income thereof conveyed or intended to be conveyed by said mortgage and each and every part thereof has accrued to your orator and that your orator is entitled to have the tolls, earnings,

income, rents, issues and profits of the mortgaged property applied in accordance with the provisions of said mortgage and that said tolls, earnings, income, rents, issues and profits be so applied.

4. That pending this suit a receiver or receivers be appointed with the usual power of receivers in like cases of the railroads, property and premises mortgaged and pledged in said mortgage to your orator, dated March 21, 1902 and of the tolls, earnings, income, rents, issues and profits thereof and that such directions may be made with respect to such receivership as may be equitable and proper.

5. That your orator may have such other and further relief in the premises or both as may be just and equitable and as to your Honors shall seem just.

May it please your Honors to grant to your orator a writ or writs of subpœna to be directed to the said defendants Metropolitan Street Railway Company, New York City Railway Company, Adrian H. Joline and Douglas Robinson as Receivers of New York City Railway Company and Adrian H. Joline and Douglas Robinson as receivers of Metropolitan Street Railway Company, The Pennsylvania Steel Company and The Degnon Contracting Company, therein and thereby commanding them and each of them at a certain time and under a certain penalty therein to be named, to be and appear before your Honors in this Honorable Court then and there severally to answer all and singular the matters aforesaid, but not under oath, answer under oath being hereby expressly waived, and to stand to abide and perform such other and further orders or decrees as to your Honors shall seem meet.

MORTON TRUST COMPANY,
By H. M. FRANCIS
Secretary
Complainant.

[SEAL]

BRONSON WINTHROP,
Solicitor for Complainant and of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:
CITY & COUNTY OF NEW YORK,

HARRY M. FRANCIS being duly sworn deposes and says, that he is the Secretary of Morton Trust Company, the above named complainant; that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief and as to those matters he believes the same to be true.

H. M. FRANCIS.

Sworn to before me this 8th day of October, 1907.

E. J. BLEGARDE
(SEAL) Notary Public
Richmond Co.
Certificate filed in New York Co.

Filed 9th October, 1907.

Exhibit A referred to in the foregoing bill of complaint of the Morton Trust Company:

(A copy of the Mortgage of the Metropolitan Street Railway Company, dated March 21, 1902, which is the same as Schedule B attached to Exhibit D hereto annexed.)

Exhibit B referred to in the foregoing bill of complaint of the Morton Trust Company:

(A copy of the Lease of the Metropolitan Street Railway Company to the Interurban Street Railway Company, which is the same as Schedule A attached to Exhibit D hereto annexed.)

Exhibit C referred to in the foregoing bill of complaint of the Morton Trust Company:

(A copy of the bill, answer and order appointing receivers in the suit of the Pennsylvania Steel Company

against the New York City Railway Company, annexed to this return as Exhibits A, B, and C.)

Exhibit D referred to in the foregoing bill of complaint of the Morton Trust Company:

(A copy of the petition of the Metropolitan Street Railway Company and of the order extending the receivership to the properties of that company, annexed to this return as Exhibits D and E.)

Exhibit H[3].

THE PRESIDENT OF THE UNITED STATES OF AMERICA, TO METROPOLITAN STREET RAILWAY COMPANY, NEW YORK CITY RAILWAY COMPANY, ADRIAN H. JOLINE AND DOUGLAS ROBINSON AS RECEIVERS OF NEW YORK CITY RAILWAY COMPANY, ADRIAN H. JOLINE AND DOUGLAS ROBINSON AS RECEIVERS OF METROPOLITAN STREET RAILWAY COMPANY, THE PENNSYLVANIA STEEL COMPANY AND THE DEGNON CONTRACTING COMPANY, GREETING:

You are hereby commanded that you and each of you personally appear before the Judges of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, in Equity, on the first Monday of November, A. D. 1907, wherever the said Court shall then be, to answer a bill of complaint exhibited against you in the said Court by Morton Trust Company, and do further and receive what the said Court shall have considered in that behalf. And this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars.

Witness, The Honorable MELVILLE W. FULLER, Chief Justice of the United States, at the Borough of Manhattan, in the City of New York, on the 9th day of October in the year of our Lord one thousand nine

hundred and seven and of the Independence of the United States of America, the one hundred and thirty-second.

JOHN A. SHIELDS,
Clerk.

BRONSON WINTHROP, ESQ.,
Solicitor for Complainant,
32 Liberty St.

The defendants are required to enter appearance in the above cause, in the Clerk's office of this Court, on or before the first Monday of November, 1907, or the bill will be taken *pro confesso* against them.

J. A. S.,
Clerk.

Exhibit H[2].

I hereby certify, That on the 9th day of October, 1907, at the City of New York, in my district, I served the within Subpœna in Equity upon the within-named Defendant, Metropolitan Street Railway Company by exhibiting to Daniel B. Hasbrouck as a director of said Company, at No. 621 Broadway, New York City, the within original, and at the same time leaving with him a copy thereof.

I hereby further certify, That on the 9th day of October, 1907, at the City of New York, in my District, I served the within Subpœna in Equity, upon the within-named Defendant New York City Railway Company, by exhibiting to Oren Root, Jr., as a Director of said Company, at No. 621 Broadway, New York City, the within original, and at the same time leaving with him a copy thereof.

I hereby further certify, That on the 9th day of October, 1907, at the City of New York, in my District, I personally served the within Subpœna in Equity, upon the within-named Defendants Adrian H. Joline and Douglas Robinson, as Receivers of the Metropol-

itan Street Railway Company, by exhibiting to each of them the within original, and at the same time leaving with each of them a copy for each thereof.

I hereby further certify That on the 9th day of October, 1907, at the City of New York, in my District, I personally served the within Subpœna in Equity, upon the within-named Defendants Adrian H. Joline and Douglas Robinson, as Receivers of New York City Railway Company, by exhibiting to each of them the within original, and at the same time leaving with each of them a copy for each thereof.

I hereby further certify, That on the 9th day of October, 1907, at the City of New York, in my District, I served the within Subpœna in Equity upon the within-named Defendant The Pennsylvania Steel Company by exhibiting to Carl Taylor in Room No. 78, P. O. Building, New York City, as Solicitor for the Pennsylvania Steel Company, in the suit of the Degnon Contracting Company and the Pennsylvania Steel Company vs. New York City Railway Company the within original, and at the same time leaving with him a copy thereof.

I hereby further certify, That on the 9th day of October, 1907, at the City of New York, in my District, I served the within Subpœna in Equity, upon the within-named Defendant, The Degnon Contracting Company by exhibiting to Carl Taylor in Room No. 78, P. O. Building, New York City, as Solicitor for the Degnon Contracting Company in the suit of The Degnon Contracting Company and The Pennsylvania Steel Company vs. The New York City Railway Company the within original, and at the same time leaving with him a copy thereof.

Dated New York, October, 10th, 1907.

WILLIAM HENKEL,
United States Marshal,
S. D. N. Y.

[ENDORSED:] U. S. Circuit Court, Southern District N. Y., Filed Oct. 10, 1907, John A. Shields, Clerk.

Exhibit J.

Order Appointing Receivers Under Bill of Complaint of Morton Trust Company.

CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

MORTON TRUST COMPANY, Complainant, AGAINST METROPOLITAN STREET RAILWAY COMPANY, NEW YORK CITY RAILWAY COMPANY, ADRIAN H. JOLINE and DOUGLAS ROBINSON, as Receivers of New York City Railway Company, ADRIAN H. JOLINE and DOUGLAS ROBINSON, as Receivers of Metropolitan Street Railway Company, THE PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY, Defendants.	In Equity.

This cause came on this day to be heard on motion of the complainant for the appointment of receivers as prayed in the bill af complaint.

On said bill of complaint, after hearing Bronson Winthrop, Esq., for complainant, and J. Parker Kirlin, Esq., for defendant Metropolitan Street Railway, Arthur H. Masten, Esq., for defendants Joline and Robinson and notice of this application having been duly given to New York City Railway Company, The Pennsylvania Steel Company and The Degnon Contracting

Company, it is, on motion of Bronson Winthrop, Esq., solicitor for complainant.

ORDERED, ADJUDGED AND DECREED that Adrian H. Joline and Douglas Robinson be and they hereby are appointed under the bill of complaint in this cause receivers of all the railroads, properties and premises mortgaged and pledged under the mortgage dated March 21, 1902, made by the defendant Metropolitan Street Railway Company to the complainant, Morton Trust Company, as trustee, described in the bill of complaint in this cause, and of all the tolls, earnings, income, rents, issues and profits of said railroad, property and premises; that said receivers be and they hereby are authorized to run, manage and operate the said railroads and properties, to collect the rents, income, tolls, issues and profits of said railroads and property, to exercise the authority and franchises of said defendant, and discharge its public duties, acting in all things subject to the supervision of this Court.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said receivers be and they hereby are authorized in their discretion to employ and discharge and fix the compensation of all attorneys, managers, superintendents, agents and employees, and to make such payments and disbursements as may be needful and proper in so doing; that the said receivers be and they hereby are fully authorized and empowered to institute and prosecute in their own names or in the name of said Metropolitan Street Railway Company, all such suits, as may be necessary in their judgment for the proper protection of the trust estate, and the discharge of their trust, and likewise to defend all actions instituted against them as receivers, and also to appear in and continue or defend any suits now pending in any court to which said defendant Metropolitan Street Railway Company is a party, the continuation or defense of which will, in the judgment of said receivers, be necessary for the proper protection of the trust estate, or

the interest and rights of creditors connected therewith.

AND BE IT FURTHER ORDERED, ADJUDGED AND DECREED that said receivers be and they are hereby authorized in their discretion from time to time out of the funds coming into their hands, to pay the expenses of operating the said properties and executing their trusts, and to make such repairs to said properties and premises as in their judgment may be necessary in order safely to conduct said operation under this order.

The said receivers are hereby required to open proper books of account wherein shall be stated the earnings, expenses, receipts and disbursements of their said trust and preserve proper vouchers for all payments made by them on account thereof.

IT IS FURTHER ORDERED that the said receivers shall forthwith file in the office of the clerk of this Court the consent of the surety on the bonds of the said receivers already given in the suit of the Pennsylvania Steel Company and The Degnon Contracting Company against New York City Railway Company and Metropolitan Street Railway Company, that the said bonds shall apply and the liability of the said surety shall continue and exist also in this suit and in respect of any and all acts and transactions of the said receivers whether under their original appointment or under their appointment in this suit or in lieu thereof that the said receivers file in this suit their joint and several bond in the sum of two hundred and fifty thousand dollars, conditioned that they will well and truly perform the duties of their office and duly account for all moneys or property which may come into their hands and abide by and perform all things which they shall be directed to do with sufficient sureties to be approved of by a judge of this Court.

AND IT IS FURTHER ORDERED that each and every of the officers, directors, agents and employees of said defendant, Metropolitan Street Railway Company, be

and they are hereby required and commanded forthwith upon demand of the said receivers or their duly authorized agent, to turn over and deliver to said receivers or their duly constituted representative any of the said property in his or their hands or under his or their control, provided, however, that the complainant shall be entitled to retain possession of any stocks, bonds or securities pledged under said mortgage.

And said defendant Metropolitan Street Railway Company, its officers, directors, agents and employees and all other persons claiming to act by, through or under said defendant, and all other persons whatsoever, are hereby enjoined from interfering in any way whatever with the possession or management of any part of the property over which the receivers are hereby appointed, or interfering in any way to prevent the discharge of their duties and any party in interest may apply for further direction.

Dated, New York, October 9, 1907.

E. HENRY LACOMBE,
U. S. Cir. J.

Filed 9th October, 1907.

Exhibit K.

Decree Continuing Receivership.

IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and DEGNON CONTRACTING COMPANY,

Complainants,

AGAINST

NEW YORK CITY RAILWAY COMPANY, METROPOLITAN STREET RAILWAY COMPANY,

Defendants.

And now, on this seventh day of October, 1907, this cause came on further to be heard upon the pleadings and upon the order made in this cause on the 24th day of September, 1907, directing that the parties hereto show cause why the receivership of the New York City Railway Company and of its property should not be continued during the pendency of this suit, and thereupon after hearing James Byrne of counsel for complainants, James L. Quackenbush of counsel for the defendant New York City Railway Company, J. Parker Kirlin of counsel for the defendant Metropolitan Street Railway Company,

It is Ordered, Adjudged and Decreed that Adrian H. Joline and Douglas Robinson, heretofore by said order of September 24, 1907, appointed temporary receivers of said defendant New York City Railway Company and of all the property of said defendant, be con-

tinued as receivers during the pendency of this suit of said defendant and of all the property of said defendant, real, personal and mixed of whatsoever kind and description and wheresoever situated including all railroads owned, leased or operated by said defendant, all tracks, terminal facilities, offices, shops and all buildings and appurtenances of every kind, all cars and other rolling stock and equipment tools, machinery, furniture, fixtures, materials and supplies, books of account, records and other books, papers and accounts, cash in bank, on deposit and in hand, money, debts, things in action, credits, stocks, bonds, securities, deeds, leases, contracts, muniments of title, bills receivable, rents, issues, profits and income accruing and to accrue as well as all interest, easements, privileges and franchises and all assets of every kind ; that the said receivers be and they hereby are authorized to run, manage and operate the said railroads and properties ; to collect the rents, income, tolls and profits of the said railroads and property, and to exercise the authority and franchise of said defendant and discharge its public duties, acting in all things subject to the supervision of this Court ; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said receivers be, and they hereby are authorized in their discretion to employ and discharge and fix the compensation of all attorneys, managers, superintendents, agents and employees, and to make such payments and disbursements as may be needful and proper in so doing ; that the said receivers be and they hereby are, authorized and empowered to institute and presecute, in their own names or in the name of said New York City Railway Company, all such suits as may be necessary in their judgment for the proper protection of the trust estate and the discharge of their trust, and likewise to defend all actions instituted against them as receivers, and also to appear in and continue or defend any suits now pending in any court to which said defendant New York City Railway Company is a party, the continu-

ance or defense of which will in the judgment of said receivers be necessary for the proper protection of the trust estate, or the interests and rights of creditors connected therewith;

AND IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that said receivers be and they hereby are authorized in their discretion from time to time, out of the funds coming into their hands, to pay the expenses of operating the said properties and executing their trusts and to make such repairs to said properties and premises as in their judgment may be necessary in order safely to conduct operations under this order, also, with the approval of this court, to pay all taxes and assessments upon the said properties or any part thereof, and all such rentals and instalments as may fall or become due for the use of any portion of said railroads and other property; and also to pay and discharge the current and unpaid pay-rolls incurred in the operation of said railroad system at any time within four months prior to their appointment; and also to pay and discharge the supply and construction accounts incurred in the operation of said railroad system and all such other claims arising from the previous operation of said properties as in their judgment on examination are proper to be paid as expenses of operation; provided that no payment of such accounts or claims shall be made without the express order of this Court.

The said receivers are hereby required to open proper books of account wherein shall be stated the earnings, expenses, receipts and disbursements of their said trust, and preserve proper vouchers for all payments made by them on account thereof.

AND IT IS FURTHER ORDERED that each and every of the officers, directors, agents and employees of the defendant, said New York City Railway Company, and all other persons whomsoever, be and they hereby are required and commanded forthwith, upon demand of the said receivers or their duly authorized agent, to turn over and deliver to said receivers or their duly

constituted representatives, any and all books of account, vouchers, papers, deeds, leases, contracts, bills, notes, accounts, moneys, or other property in his or their hands or under his or their control.

And the defendant, New York City Railway Company and its officers, directors, agents and employees, and all other persons claiming to act by, through or under the defendant and all other persons whomsoever are hereby enjoined from interfering in any way whatever with the possession or management of any part of the property over which the receivers are hereby appointed or interfering in any way to prevent the discharge of their duties or their operating the same, and any party in interest may apply for further direction.

AND IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that said Adrian H. Joline and Douglas Robinson heretofore by order entered in this cause on October 1, 1907, appointed also receivers of the properties of the defendant Metropolitan Street Railway Company, be and they hereby are continued as receivers during the pendency of this suit of the properties of said defendant Metropolitan Street Railway Company and of said defendant and as such receivers shall have and may exercise in respect thereof the like rights, powers and duties with respect to said defendant that such receivers are hereinbefore given with respect to the New York City Railway Company and its properties.

AND IT IS FURTHER ORDERED that each and every of the officers, directors, agents and employees of said defendant Metropolitan Street Railway Company, and all other persons whomsoever, be and they are hereby required and commanded forthwith, upon demand of the said receivers or their duly authorized agent, to turn over and deliver to said receivers or their duly constituted representative, any and all books of account, vouchers, papers, deeds, leases, contracts, bills, notes, accounts, moneys or other property in his or their hands or under his or their control.

And said defendant, said Metropolitan Street Rail-

way Company, and its officers, directors, agents and employees and all other persons claiming to act by, through or under said petitioner and all other persons whomsoever, are hereby enjoined from interfering in any way whatsoever with the possession or management of any part of said property over which the receivers have been appointed or interfering in any way to prevent the discharge of their duties or their operating the same.

IT IS FURTHER ORDERED that the bonds in the sum of two hundred and fifty thousand dollars heretofore given by said receivers for the faithful performance of their duties and filed in this cause stand and be and the said bonds hereby are approved.

IT IS FURTHER ORDERED that the Statement of the powers, duties, and rights of said receivers contained in this order supersedes, from and after the entry of this order, the statement thereof contained in said orders of September 24th, 1907 and October 1st, 1907.

It is further Ordered that any party in interest may apply for further direction.

Dated, New York, October 9th, 1907.

E. HENRY LACOMBE,
United States Circuit Judge.

Filed October 9th, 1907.

Exhibit L.

Amendment to Decree Continuing Receivership.

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY, and ano.,

vs.

THE NEW YORK CITY RAILWAY COMPANY and METROPOLITAN STREET RAILWAY COMPANY.

Upon suggestion that its recitals are incomplete, the decree in this suit making receivers permanent, which was made and entered on October 9th, 1907, is hereby amended by including in the recital of counsel heard the following:

"Roger Foster appeared for Joseph Konrad a tort creditor having a judgment against the New York City Railway Company, which had been appealed and secured on appeal, and also for Gallagher and others tort creditors of the Metropolitan Street Railway Company, presented to a petition asking to be allowed to intervene and to be heard on behalf of intervenors for relief prayed for. The Court set the hearing upon said petition for October 14th at 3 P. M., but stated that it would hear Mr. Foster at the pending hearing as *amicus curiæ* if he so desired, and he was so heard.

Gilbert Ray Hawes appeared for certain tort creditors of defendant New York City Railway Company,

having unliquidated claims, and also presented a petition asking to be allowed to intervene and to be heard on behalf of intervenors for relief prayed for. The Court set the hearing upon said petition for October 14th, at 3 P. M., but stated that it would hear Mr. Hawes at the pending hearing as *amicus curiæ*, if he so desired, and he was so heard."

October 15th, 1907.

E. HENRY LACOMBE,
U. S. Circuit Judge.

Filed October 15, 1907.

Exhibit M.

Decree Appointing Special Master.

IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY,

AGAINST

NEW YORK CITY RAILWAY COMPANY, ET AL.

And now, on this 25th day of October, 1907, this cause came on further to be heard upon the Bill of

Complaint and the Answer of the above named defendant thereunto, and upon all the proceedings had in the cause, whereupon, on further consideration thereof, the solicitors for all the parties being before the Court, it is

ORDERED, ADJUDGED AND DECREED as follows, namely: The Court finds that the defendant, the New York City Railway Company, is insolvent and that its assets and property of every description constitute a fund in which the complainants and other creditors of said defendant corporations are interested and that the assets of said corporation should be marshalled and the nature and extent of the rights, liens, equities and priorities of the several creditors thereof should be ascertained and decreed by the Court.

And it is further ORDERED, ADJUDGED AND DECREED that it be referred to William L. Turner, Esquire, who is hereby appointed Special Master in this cause, to take proof of the amount of all claims and demands against the said the New York City Railway Company and to report the same to this Court with all convenient speed.

And it is further ORDERED, ADJUDGED AND DECREED that all claims and demands against the said defendant shall be presented to the said Special Master on or before the 30th day of November, 1907, and that said Special Master give public notice accordingly by publication twice in each week for a period of three weeks in at least two daily newspapers published in the City of New York to be selected by him, which said notice shall also contain a statement of the time and place of the first hearing before said Special Master.

And it is further ORDERED, ADJUDGED AND DECREED that Adrian H. Joline and Douglas Robinson, the Receivers heretofore appointed herein file their accounts with the said Special Master on the 10th day of December, 1907, covering the period from September 24th, 1907, to and including November 30th, 1907, and shall

file their accounts every two months thereafter, and that said Special Master shall examine the same and report thereon to the Court from time to time.

And all other questions not hereby disposed of and determined are reserved for further adjudication.

Dated New York City, October 25th, 1807.

(Signed) E. HENRY LACOMBE,
U. S. C. J.

Filed 25th October, 1907.

Exhibit N.

Order Denying the] Petition of Joseph Conrad.

At a Stated Term of the Circuit Court of the United States for the Southern District of New York in the Post Office Building, New York City, on the 6th day of November, 1907.

Before HONORABLE E. HENRY LACOMBE, United States Circuit Judge.

PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY

AGAINST

THE NEW YORK CITY RAILWAY COMPANY.

IN THE MATTER

OF

The Application of JOSEPH KONRAD, individually and as Admistrator of the Estate of Paul Planovsky, deceased, for leave to intervene.

Joseph Konrad, individually and as administrator of the Estate of Paul Planovsky, deceased, having presented a petition for leave to intervene in the above entitled suit in equity; now, after hearing Roger

Foster, Esq., in support of said petition, and James Byrne, Esq., in opposition thereto, it is hereby

Ordered that the said petitioner have leave to file said petition; and that the same hereby is directed to be filed accordingly; and that the complainants herein have leave to file the affidavits presented in opposition to said petition and that the same hereby are filed accordingly; and that the prayer of said petition be and the same hereby is denied.

Filed 6th November, 1907.

Exhibit N2.

Petition of Joseph Konrad for Leave to Intervene.

CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY,

AGAINST

THE NEW YORK CITY RAILWAY COMPANY.

IN THE MATTER

OF

The Petition of JOSEPH KONRAD, individually and as Administrator of the Estate of Paul Planovsky, Deceased.

TO THE HONORABLE THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FEW YOLK.

The petition of Joseph Konrad, individually and as administrator of the estate of Paul Planovsky, deceased, respectfully shows:

I. Your petitioner is a resident of the City, County and State of New York. On or about the 9th day of

October, 1906, your petitioner was duly appointed by the Surrogate's Court of the City and County of New York, a court of competent jurisdiction, administrator of the goods, chattels and credits of Paul Planovsky, who had previously died in said City, County and State, of which said Paul Planovsky was then a resident. On or about the 13th day of October, 1907, your petitioner duly qualified as such administrator and your petitioner still is such administrator. On or about the 22nd day of June, 1907, your petitioner duly recovered in the Supreme Court of the State of New York a judgment for the sum of $8,538.94, against the New York City Railway Company, the defendant above named, which judgment was then duly filed and entered in the office of the Clerk of the County of New York. Said judgment is still unpaid. Said defendant subsequently appealed from said judgment to the Appellate Division of the Supreme Court of the State of New York for the First Department. Such appeal is still pending and undetermined. An undertaking to secure the payment of said judgment, in case said judgment is affirmed upon said appeal, has been filed by the defendant in the said Clerk's office with the American Surety Company as surety to said undertaking. The said defendant has contended and still contends, that the said judgment was erroneously rendered ; and the said defendant relies in support of said appeal upon numerous technical objections and exceptions taken during the trial of said action, including certain objections and exceptions to the admission of evidence, and including certain objections and exceptions to the charge and to the refusals to charge of the trial Judge, which objections and exceptions do not affect the merits of plaintiff's cause of action in the suit in which said judgment was rendered. And should the said judgment be reversed, it is unlikely that said reversal will be a decision against the merits of plaintiff's said claim. Said defendant has given no security for the payment of said claim in case said judgment is reversed and in case a new

trial is ordered and in case a subsequent judgment is recovered against said defendant. The action which resulted in said judgment was an action brought to recover damages for the death of the said decedent because of the negligence of said defendant. Your petitioner is also, individually, a creditor of the said defendant to an amount equal to at least Two Hundred ($200.00) Dollars, because of the arbitrary and illegal execution by said defendant from your petitioner, at divers times during the past four (4) years, of additional fares upon his transfer from one car to another car of said defendant at and near the junction of 14th Street and Ninth Avenue and 23rd Street and Broadway and 8th Street and Second Avenue, in the Borough of Manhattan, City, County and State of New York; and because of the liability of said defendant to him for penalties because of said exaction; and because of the refusal of said defendant to give his tickets entitling him to transfers at said junction without the payment of additional fares; and because of the refusal of said defendant to give him such transfers free.

Your petitioner is obliged, in the transaction of his business, daily to take transportation upon one or more of the street railroads, which were in the possession of the said defendant at the time of the appointment of the receivers herein described. For several years he has suffered and he still suffers great inconvenience and danger to his life, body and health, because of insufficient transportation facilities, including an insufficient number of cars furnished by the defendant, and because of the reckless and dangerous manner in which said cars are and have been operated.

II. On the 24th day of September, 1907, a bill in equity was filed in the Clerk's office of this Court by the above named complainants, the Pennsylvania Steel Company and the Degnon Contracting Company, against the above named defendant, the New York City Railway Company. The relief prayed in said bill

was in substance ; the administration of the assets of said defendant, and the marshalling of its said assets, and the appointment of a receiver of its said assets, and an injunction against interference with the possession of said assets by said receiver during the pendency of said suit, and a writ of subpœna, together with the prayer for general relief. In the said bill of complaint, it appeared : that the said complainants were citizens of different States ; that neither of said complainants was a judgment creditor of said defendant; but that each of said complainants claimed to be a contract creditor of said defendant ; the said Steel Company for goods alleged to have been sold and delivered to said defendant ; and said Degnon Contracting Company for services alleged to have been performed for said defendant. A paper purporting to be an answer to said bill in equity was filed on behalf of the said defendant in the Clerk's office of said Court upon the same day. Upon information and belief : that the said paper purporting to be an answer was filed in said Clerk's office within less than ten minutes after the filing of the said bill in equity therein. At or about the same time of the filing of said paper purporting to be an answer, the appearance of said defendant in said suit was entered. Your petitioner is informed and believes and avers that no subpœna has been issued upon said bill. A rule for the issue of a subpœna to answer said bill, returnable on the 1st day of November, was entered in the rule book in the Clerk's office of this Court on said day. In the regular course of practice, no answer would have been filed to said bill in equity before the 1st Monday in December, 1907.

III. On September 24th, 1907, upon the consent of the counsel for the said defendant, an order was made by the Honorable E. HENRY LACOMBE, a Judge of this Court, which order appointed as temporary receivers of the assets of the said defendant, Adrian H. Joline and Douglas Robinson, both of whom have since qualified as such. The said order contained a

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number of extraordinary provisions, which your petitioner believes and avers were not observed by the said Judge at the time when he signed said order. Amongst others were: a provision providing for the payment by said receivers, without application to the Court, of any rentals that might subsequently become due for the use of the property in the possession of the said defendant; a provision authorizing said receivers, without application to the Court, to pay and discharge all such claims arising from the previous operation of the said property in the possession of said defendant, as in the judgment or examination of said receivers should be properly paid as expenses of the operation of said property; with a provision authorizing said receivers to employ and to fix the compensation of all officers, attorneys, managers and superintendents of the said defendant railway company, and to borrow money, without application to the Court, for the purpose of redeeming such securities pledged by said defendant as there might be determined to redeem. Your petitioner avers upon information and belief, that the said powers given to said receivers are extraordinary and are powers which customarily are only exercised by the Courts; and that they illegally vest in said receivers the power to make illegal preferences among creditors of said defendant. Said order further contained a provision enjoining all other persons whomsoever, not parties to the suit, as well as the said defendant, and its officers, directors, agents and employees, from interfering in any way with the possession or management of any part of the property for which said receivers were appointed; and a further provision directing the parties to this suit to show cause before this Court on the 7th day of October, 1907, why the said receivership should not be continued during the pendency of this suit; and that upon the hearing thereof any other creditor of the defendant or any party in interest, may be heard. Said order contained no provision providing that any claims against said railway company should be entitled

to a preference in the distribution of its assets, although, as your petitioner is informed and believes, such provisions are customary in orders appointing receivers of railway companies.

IV. The said bill of complaint contained amongst other things, the following statement concerning said defendant: "That in the course of the operation of "its lines, numerous accidents have occurred, in re- "spect to which suits have been brought and are now "pending; and that said suits, to the number of "several thousands, are now upon the calendars of the "Courts awaiting trial; and that the defendant will be "without means to meet judgments recovered in said "suit." The said action by your petitioner which resulted in the judgment above described is one of the actions referred to in said allegation in said bill. One of the concealed objects of said suit and of the motion for said receivership was to delay the trial of said suits and to avoid the payment of the claims that are the foundation of said suits. No affidavit that there was no collusion was annexed to said bill in equity. The said answer admitted all the allegations in said bill of complaint and joined in the prayer of the complainants for a receiver. Said answer was verified by the oath of the secretary of said defendant taken on the same day.

V. The said bill of complaint was prepared and filed at the request of the said defendant and at the request of the officers and agents of the said defendant and of the persons in control of the said defendant. Before said bill of complaint was filed, it or a copy thereof was shown to officers and agents and attorneys of said defendant and of the persons in control of said defendant; and the said answer was prepared before said bill of complaint was filed. The said answer or a copy thereof was shown, before the same was filed, to the attorney and counsel for said complainants. Upon information and belief that the counsel fees for the filing

of said bill of complaint were paid out of the funds of said defendant and by persons in control of said defendant; and that the said bill of complaint was prepared by the counsel of said defendant and of persons in control of said defendant. It was published in the newspapers of this City as the result of interviews with officers and agents of said defendant and with persons in control of said defendant, for several days prior to said application; that a receiver of said defendant would be appointed by this Court at the procurement of the said persons. The said suit, in which said bill and answer were filed, did not and does not really nor substantially involve any dispute between the parties to the same. It did not and does not really nor substantially involve any controversy. It did not and does not really nor substantially involve any dispute between said parties within the jurisdiction of this Court. It did not and does not really nor substantially involve any controversy within the jurisdiction of this Court. The parties complainant to said suit were improperly and collusively made and joined as complainants, for the purpose of creating a case, cognizable under the Judiciary acts of the United States. There was not in fact and there never has been any controversy nor dispute between the said defendant and either of said complainants concerning the subject matter of this suit, nor, as your petitioner is informed and believes and avers, concerning any other matter. The object of the commencement of the said suit was to withdraw the administration of the assets and the control of the defendant, which is a corporation organized under the laws of the State of New York, from the jurisdiction of the laws of the Court of the State of New York, and for other purposes, some of which are hereinafter and hereinbefore mentioned.

VI. For several weeks there has been pending in the State of New York, an investigation in pursuance of an act of the legislature of the State of New York, by the Public Service Commission for the City of New

York, into the affairs of the said defendant. In the course of said examination it has been alleged by officers and agents of said defendant, that certain books of said defendant have been destroyed ; and obstacles in the way of the production of the books and papers of said defendant and in the compulsion of the appearance of witnesses who were officers and agents of said defendant and of corporations controlled by said defendant have been interposed by said defendant and by persons in control of the said defendant. Matter has already been discovered in the course of said investigation which tends to prove large liabilities on behalf of the persons in control of said deant and of the corporations controlled by the same to said corporations and others, by reason of the misappropriation of the funds of the said defendant. One of the purposes of the application for said receivership was in order to impede the further examination into the books and papers of the said defendant by said Commission ; inasmuch as there is grave doubt whether said receivers are obliged to obey the process of said Public Service Commission ; and for the reason that dilatory proceedings in this Court, and upon appeals, and writs of error, will be facilitated should said receivers oppose the production of said books and papers. For, on account of the accumulation of business in the Supreme Court of the United States, and on account of the provisions in the statutes of the United States authorizing writs of supersedeas, as of right, in many cases, and for other reasons, delays can be more easily obtained in the Federal Courts than in the Courts of New York where the process in proceeding in equity, both originally and upon appeal is much more summary.

VII. The said Public Service Commission was created principally for the purpose of remedying grave abuses which have existed for a long time in the management and operation of said defendant and in the operation of the street railroads in its possession,

which, for many years, said defendant has and its predecessors have so operated as to endanger the lives and safety of the people of the City New York and so as not to furnish proper and sufficient accommodatian and transportation for them. At the time when said application for the appointment of said receivers was made, proceedings were pending before said Public Service Commission for the purpose of compelling said defendant to furnish proper, sufficient and safe transportation for passengers in said city. Immediately after the appointment of said receivers, and on or about September 26th, 1907, the attorney for said defendant, who has appeared as its solicitor in the said suit, appeared before said Public Service Commission, filed a certified copy of the order appointing said receivers, and suggested an adjournment of the said proceedings, suggesting to said Public Service Commission, that it might not be wise for said Public Service Commission to continue its proceedings against said defendant ; and he procured an indefinite postponement of the proceedings of said Public Service Commission to remedy said abuses and to furnish proper, sufficient and safe transportation to the people of The City of New York because of the appointment of the said receivers and because of his said application. The pressure of business in this Court is so great and the orderly progress of proceedings in chancery is necessarily so slow, that it will be impossible for this Court to remedy said abuses within so short a time as would have been done by said Public Service Commission, had said Public Service Commission not been impeded by the appointment of the said receivers.

VIII. The said defendant is largely indebted to the State and City of New York for the payment of taxes. One of the reasons of the application for the appointment of said receivers was in order to delay proceedings for the collection of said taxes.

IX. The application for the appointment of said receivers was made also for stock jobbing purposes and

to promote speculation in stock of said defendant and of other corporations affiliated therewith and controlled thereby, and in control thereof, by officers, directors and persons in control of said defendant.

X. Another reason for the application for the appointment of said receivers was in order to procure the continuance of the payments of large, excessive and exorbitant salaries to officers, superintendents, agents and employees of said defendant and of corporations controlled by said defendant, which salaries are now being paid to them. Said payments are unnecessary; because the services of many of such officers, superintendents, agents and employees are entirely unnecessary and should be dispensed with; and for the further reason that the said salaries and each of them are in excess of the reasonable values of the services of the persons to whom said salaries are paid and to each of them.

XI. One of the reasons alleged in said bill for the appointment of said receivers is: that the entire railroad system of the said defendant may otherwise be broken up by levies, executions and otherwise. The said claim is not made in good faith and is entirely untrue and unfounded, for the following reasons amongst others: All the lines of railroads operated by said defendant in the Borough of Manhattan, and upon information and belief, all such in the Borough of Bronx, except that hereinafter described, were obtained by said defendant under a lease or contracts from the Metropolitan Street Railway Company, a corporation of the State of New York, which had the right to the possession and control of the same, and which is fully able to operate them and each of them. In case said lease and contracts should be broken and cancelled and the property thereby covered be restored to the said Metropolitan Street Railway Company, there will be no interruption in the operation of the said lines.

XII. It is alleged in said bill that by the terms of said lease the said lessor can terminate the same upon the expiration of twelve (12) months from a demand for rent and a default in payment thereof; but your petitioner charges, upon information and belief, that by the true terms and construction of said lease, said lessor may obtain possession of the demised premises and property through the Courts of the State of New York immediately upon a default in the payment of rent, unless prevented by said suit. Your petitioner refers to the said lease and demands that the said defendant may be obliged to produce the same upon the hearing of this petition.

XIII. Your petitioner is informed and believes and avers; that the only street railway now owned by the said defendant, the New York City Railway Company, is a line about two miles long in the Borough of Bronx, upon which only three (3) or four (4) cars are run, and in connection with which there is no other property, except a car barn; and that this appears in the testimony taken before the said Public Service Commission. Said railroad is of little importance. Upon information and belief; that it is not now operated in connection with said system; that on the contrary the said railway company refuses to give the transfers to passengers upon said roads, from said roads to street railways in the said Borough of Manhattan.

XIV. Your petitioner is informed and believes and charges that all other property now in the possession of the said defendant, except money, books and papers, is property of which it only has a leasehold interest, and is property upon which no levy can be made by execution nor by attachment; that the lessor of said property is amply able to operate the same as a unit, and that it formerly did so; that said lessor has not applied for a receiver; that all of said property is covered by mortgages; that said

mortgagees have not applied for a receiver; and that allegations in said bill that there is danger of interruption of the operation of said railroads by the levy of executions are untrue.

XV. Your petitioner further avers, upon information and belief; that a large amount of the said lines covered by said lease are parallel and competing lines of railroads which the said Metropolitan Street Railway Company and said defendant acquired the possession and control of through contracts, which are in violation of the laws of the State of New York and of the public policy of the State of New York as expressed in the statutes of the State and of the Courts thereof and of a recent decision of this Court, rendered by Judge HOLT; and that they are also in conflict with the public policy of the United States, as expressed in its statutes and the acts of its executive; and that public policy will not be promoted by the continuance of the operation of said railroads as a single system. Amongst other such parallel and competing lines are the lines on the Second Avenue; on the Third Avenue; and on Broadway; on the Seventh Avenue; on the Sixth Avenue; on the Eighth Avenue; on the Ninth Avenue and on two or more of said avenues.

XVI. Your petitioner further alleges, upon information and belief, that the said defendant is perfectly solvent, except for its liability upon said lease, and that the said lease is invalid and illegal; because the same tends to promote a monopoly, in violation of the statutes of the State of New York, and because the same was procured through fraud, and for other reasons; and that defendant's liability upon said lease is guaranteed by another corporation.

XVII. The said receivers have already appointed, as superintendent of the said railway system, one

Vreeland, who is the president of the defendant, and who is one of the persons responsible for the condition of affairs which are the foundation of the application for said receivership. Your petitioner is informed and believes and charges, that the said receivers have employed almost all the other officers and agents and attorneys of the said defendant ; that the result of said receivership has been to continue in control of the property of the said defendant the persons who were instrumental in bringing about said state of facts, and who are interested in concealing wrongdoing on their part, and who are anxious for further opportunities for wrongdoing on their part ; and that it will be impossible for said receivers, so long as said persons are engaged in their employ, to ascertain the extent of the wrongdoing which has been previously committed and which will continue on the part of the persons thus retained in their employ.

XVIII. The said defendant is not engaged in interstate, nor in international commerce, nor in commerce with the Indian tribes.

XIX. There is no matter in dispute in said suit which exceeds the sum of Two Thousand ($2,000.00) Dollars. There is no matter in dispute in said suit which exceeds the value of Two Thousand ($2,000.00) Dollars. There is no matter of any sort in dispute in said suit.

XX. The said suit was instituted by collusion between the complainants and the defendant to the same, and this Court had and has no jurisdiction of said suit. The order for the appointment of said receivers was obtained by collusion between the parties to said suit and by the misrepresentation in said pleadings, to the Judge who signed said order, of material facts affecting the application for the same, and by the suppression from said Judge, of material facts which affected said application. Neither this Court, nor any

Judge thereof, had any jurisdiction to make said order, and said order was made by the learned Judge who signed the same without any explanation to him of the objects of said suit.

XXI. Upon information and belief: that this continuance by this Court of jurisdiction over said suit in equity and the continuance of said receivership will be a violation of the Constitution of the United States, which provides in the Seventh Amendment of the same: that "in suits at common law, where the value in controversy shall exceed Twenty Dollars, the right of trial by jury shall be preserved;" and also a violation of other parts of the Constitution of the United States; and also a violation of Section 723 of the Revised Statutes of the United States; which provides: that "suits in equity shall not be sustained in either of the Courts of the United States in any case where a plain, adequate and complete remedy may be had at law and of other Statutes of the United States;" and that the said appointment of said receivers in a case in which the complainants are not judgment creditors and hold a claim, which can be maintained at common law, and is not purely equitable, and they are not lienors, is without lawful authority.

WHEREFORE your petitioner prays that an order may be made dismissing said bill in equity for fraud, collusion and want of jurisdiction and setting aside said order appointing said receivers; or in case said application is denied, that an order may be made striking out from said order, the provisions to which reference is hereinbefore made, and by inserting in said order, as a condition precedent to the appointment of said receivers, that all debts and liabilities of said defendant for personal injuries and for causing the death of human beings, whether the same have been reduced to judgment or not, shall have a preference over all other claims upon the distribution of the assets of said defendant; and that your petitioner may have such

other and further relief in the premises as may be just, together with his costs.

JOSEPH KONRAD,
Individually and as Administrator of
Paul Planovsky, deceased.

ROGER FOSTER,
Solicitor for Petitioner,
35 Wall Street,
New York.

ROGER FOSTER,
Of Counsel.

COUNTY OF NEW YORK, ss:

JOSEPH KONRAD, being duly sworn, deposes and says: I reside in the City, County and State of New York and I am the petitioner above named. The foregoing petition is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe the same to be true.

I hereby incorporate the said petition into this my affidavit to the same effect as if the same were herein stated specifically and at length.

"JOSEPH KONRAD."

Sworn to before me this 3rd day of October, 1907.

EMIL KISS,
Notary Public,
New York County.

(Notarial Seal).

Filed 28th October, 1897.

Exhibit N3.

Amendment to Petition of Joseph Konrad for Leave to Intervene.

CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and Others, Complainants, AGAINST THE NEW YORK CITY RAILWAY COMPANY, the Original Defendant, and THE METROPOLITAN STREET RAILWAY COMPANY, Intervening Defendant.	In Equity.

And now comes Joseph Konrad, individually and as administrator of Paul Planovsky, deceased, and he makes and files this his amendment to the petition of intervention heretofore made and presented to the Court and filed herein.

He adds to the prayer of said petition said specific prayer: "And that your petitioner individually and as administrator of the estate of Paul Planovsky, deceased, may be allowed to intervene in the said suit on behalf of himself, individually and as such administrator as aforesaid, and on behalf of all other judgment creditors of the defendant, The New York City Railway Company, who may come in and contribute to the defense of this suit.

And your petitioner will ever pray, etc.

ROGER FOSTER,
Solicitor and attorney for petitioner,
35 Wall Street,
New York.

Filed 28th October, 1907.

Exhibit N4.

Petition of Daniel Gallagher and Francis S. Reisenberg for Leave to Intervene.

CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and others, Complainants, AGAINST THE NEW YORK CITY RAILWAY COMPANY, the Original Defendant, and THE METROPOLITAN STREET RAILWAY COMPANY, Intervening Defendant.	In Equity.

TO THE HONORABLE THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

The joint and several petition of Daniel Gallagher and Francis S. Reisenberg, residents and citizens of the City and County of New York, and each of them, respectfully shows to the Court:

I. Your petitioners are, and each of them is, a creditor of the intervening defendant, The Metropolitan Street Railway Company, because of personal injuries and damages caused to each of your petitioners by negligence of the said Railway Company. Actions to recover damages for personal injuries have been brought by each of your petitioners and are now pending in the Supreme Court of the State of New York undetermined. The defendant, The New York City Railway Company, by a lease dated on or about February 14th, 1902,

wherein and whereby it acquired a leasehold interest in the street railroads then operated by said Metropolitan Street Railway Company, promised to pay all judgments for damages for personal injuries recovered against said Metropolitan Street Railway Company.

II. Heretofore, on or about September 24th, 1907, a bill in equity was filed in the Clerk's office of this Court by the above named complainants against the above named defendant, The New York City Railway Company, in which on said day a receiver of the property of said New York City Railway Company was appointed. Subsequently, on or about October 1st, 1907, the said Metropolitan Street Railway Company intervened in said suit, by an order of this Court, made upon the petition of said last named railway company, then filed, to which the complainants and the original defendant consented; and on said date said receivership was extended to the properties of said Metropolitan Street Railway Company. Both of said orders appointing said receivers enjoined all persons whomsoever from interfering in any way whatsoever with the possession or management of any part of said property over which said receivers were appointed. Said last mentioned order contained a provision that "any party in interest may apply for direction". Subsequently, on or about October 9th, 1907, an order was made herein continuing said receivership during the continuance of said suit. On or about said date, a paper purporting to be a bill in equity was filed by the Morton Trust Company, which claimed to be a mortgagee of the property of the said Metropolitan Street Railway Company, and which prayed the appointment of a receiver of said property, although said mortgage was not yet due by its terms. On the same day an order was made extending said receivership for the benefit of said Morton Trust Company. All the said parties above named, including your petitioners, except the original complainants to this suit, are, and each of them is, and at all times herein mentioned have been, citizens of the State of New York.

III. On or about October 7th, 1907, one Joseph Konrad, individually and as administrator of Paul Planovsky, deceased, presented his verified petition to this Court praying leave to intervene in the said suit above entitled. Your petitioners hereby refer to and incorporate in this their petition each of the allegations in the said petition of said Joseph Konrad with the same force and effect as if the same were hereinafter repeated specifically and at length.

IV. That said suit above entitled was collusive. The said suit was brought by the said complainants at the request of the defendant, The New York City Railway Company, for the purpose of procuring the said receivership, in order to evade the operation of the statutes of the State of New York, and to shield persons in control of said two defendants from actions in the State Courts, and in order to impede your petitioners and other creditors of said two railway companies from collecting their claims, and for stock jobbing purposes, and in order to compel a reorganization, at the terms proposed by those in control of said defendants, of the assets and claims of all persons interested in the property of said defendants, and for the purposes set forth in said Konrad's petition.

WHEREFORE, your petitioners, and each of them, pray leave to intervene in the said suit; and that the orders granting said receiverships and injunctions be set aside; and that your petitioners may have such other and further relief in the premises as may be just; and your petitioners will ever pray, &c.

DANIEL GALLAGHER,
FRANCIS S. REISENBERG,
Petitioners.

By ROGER FOSTER,
their attorney and solicitor,
35 Wall Street,
New York.

COUNTY OF NEW YORK, ss.:

FRANCIS S. REISENBERG, being duly sworn, deposes and says: The foregoing petition is true to my own knowledge except as to the matters therein stated to be alleged upon information and belief and as to those matters I believe the same to be true.

"FRANCIS S. REISENBERG."

Sworn to before me this 25th day of October, 1907.

"E. D. H. CARLETON"
Notary Public,
Kings County,
New York County.

(S. L.)

Cert. N. Y. Co.

Filed 28th October, 1907.

Exhibit N5.

Affidavit of John V. W. Reynders.

UNITED STATES CIRCUIT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY, Complainants, AGAINST THE NEW YORK CITY RAILWAY COMPANY, Defendant.	In Equity.

STATE OF PENNSYLVANIA,
County of Dauphin,
MIDDLE DISTRICT OF PENNSYLVANIA, } ss.

JOHN V. W. REYNDERS being duly sworn, says: I am the Vice-President of the complainant, the Pennsylvania Steel Company; I have read the affidavit of Joseph Konrad, verified October 3rd, 1907.

The allegation that no subpœna has been issued upon the bill of complaint in this cause is an error; that on the contrary the subpœna was issued and served before the answer was filed.

I am informed and believe that none of the statements made in said affidavit in regard to the order of September 24th, 1907, appointing receivers herein that said order contained a number of extraordinary provisions, that provisions therein were not observed by the Judge signing the same at the time he signed said

order, that the powers given therein to the receivers are extraordinary and that they illegally vest in the receivers the power to make illegal preferences is correct.

I deny that one of the objects of the suit or of the application for the receivership was or is to delay the trial of the suits mentioned in paragraph four of said affidavit, or of any other suits, or to avoid the payment of the claims which are the foundation of such suits, or any other claims; I deny that it was the purpose of the application for the receivership to impede the further examination into the books and papers of the defendant New York City Railway Company by the Public Service Commission or in any other way to hinder and impede said Commission, and I deny that such application was made for stock jobbing purposes or to promote speculation in the stock of said defendant or of any other corporation, or to procure the continuance of the payments of large, excessive or exorbitant salaries to officers, superintendents, agents or employees of defendant or of corporations controlled br defendant or for any wrongful purpose or for any wrongful object.

I deny that any counsel fees have been paid to the counsel or to the solicitors for the complainants out of the funds of said defendant or by persons in control or in any way connected with the defendant.

In regard to the statements in said affidavit to the effect that the suit does not involve any substantial dispute between the parties within the jurisdiction of the Court, I submit that such statements are merely deponent's conclusions from the facts which are before the Court and that they are not correct conclusions. The defendant was indebted to the complainants and refused to pay such indebtedness, and manifestly there was a controversy between them which is within the jurisdiction of this Court.

I admit that the suit was brought in this Court for the purpose of having this Court take jurisdiction of the suit, but I deny ab-

solutely as to the Pennsylvania Steel Company, and on information and belief as to the Degnon Contracting Company, that there was any impropriety or collusion or anything else wrongful in the conduct of either of the complainants, and I allege that as non-residents of the State of New York, the complainants had under the laws of the United States, an absolute right to decide whether they would bring this suit in the Courts of the United States or in the Courts of the State of New York; I deny that the object of this suit is anything else than it appears to be on the face of the bill of complaint, viz.: the administration of the assets of the defendant in a proper Court having jurisdiction thereof; at the time of the beginning of this suit I believed, and I now believe, that this Court was the proper one in which the interests of complainants this suit should be instituted and this Court was therefore selected; I deny absolutely as to the Pennsylvania Steel Company all charges of collusion, or suppression of facts and all wrongdoing on the part of the complainant, the Pennsylvania Steel Company of any kind or nature, and I deny said charges on information and belief as to the Degnon Contracting Company.

(Signed) JOHN V. W. REYNDERS.

Subscribed and sworn to before me this 5th day of October, 1907.

WILLIAM C. ARMOR,
[SEAL] Notary Public,
Commission expires April 19th, 1911.

STATE OF PENNSYLVANIA, Dauphin County, } ss.:

I, JAMES H. WORDEN, Prothonotary of the Court of Common Pleas of Dauphin County, the same being a Court of Record, do hereby certify that William C. Armor, Esquire, was at time the annexed and foregoing affidavit was made an acting Notary Public in said

County and State, duly commissioned and qualified and authorized by law to administer oaths, take acknowledgments of deeds, etc.; that I am well acquainted with his hand writing and verily believe that the signature to the said affidavit is genuine, and further that the annexed instrument is executed and acknowledged according to the laws of the State of Pennsylvania.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Harrisburg this 5th day of October, 1907.

JAMES H. WORDEN,
Prothonotary.

[SEAL]

Filed 28th October, 1907.

Exhibit N6.

Affidavit of Charles E. Warren.

UNITED STATES CIRCUIT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and THE DEGNON CONSTRUCTION COMPANY,
Complainants,

AGAINST

NEW YORK CITY RAILWAY COMPANY,
Defendant.

STATE OF NEW YORK, }
County of New York, } ss. :

CHARLES E. WARREN, being duly sworn, says :

I. I am the Secretary of the defendant, New York City Railway Company. I have read a copy of the affidavit of Joseph Konrad purporting to have been verified October 3rd, 1907. I deny the allegation of said affidavit that no subpœna had been issued upon the bill of complaint in this cause, but on the contrary allege that the subpœna was issued and served upon an officer of the defendant company before the answer was filed.

II. I deny that any action taken by this defendant in this cause was for the purpose of delaying the trial of any of the suits mentioned in paragraph four of said affidavit, or of any other suits or to avoid the payment of any of the claims imposed in such suits or to avoid or delay the payment of taxes in favor of the State of

New York or to delay or avoid the payment of lawful claims of any kind whatsoever.

III. I deny that any action taken by the defendant in this cause has been for the purpose of hindering or impeding the examination now being conducted by the Public Service Commission for the First Department, or for stock jobbing purposes or to promote speculation in the stock of any corporation or to continue the payment of large, excessive or exorbitant salaries to any of the officers or employees of the defendant corporation or for the purpose of carrying out any illegal or unlawful purpose.

IV. I deny that the defendant or any person on behalf of the defendant has paid or promised any counsel fees to the solicitors for the complainants to be paid out of the funds of this defendant or otherwise.

V. I deny absolutely the charges of collusion or bad faith contained in said affidavit, and allege that there can be no question as to the validity of the claims of each of the complainants or of the correctness of the allegations of the defendant's answer to the bill of complaint, and I deny that the purposes of the defendant in the action which it has taken in filing in this suit its answer admitting the allegations of the complaint and joining in the prayer of the complaint were any other than the purpose alleged in said answer.

(Signed) CHARLES E. WARREN.

Sworn to before me this 7th day of October, 1907.

KENNETH B. HALSTEAD,
Notary Public,
Kings County.

(SEAL)

Certificate filed in New York County.

Filed, 28th October, 1907.

Exhibit N7.

Affidavit of Nathaniel J. Haywood.

UNITED STATES CIRCUIT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY, Complainants, AGAINST THE NEW YORK CITY RAILWAY COMPANY, Defendant.	In Equity.

STATE OF NEW YORK,
County of New York, } ss.
SOUTHERN DISTRICT OF NEW YORK.

NATHANIEL J. HAYWOOD, being duly sworn, says: I am the Secretary of the complainant the Degnon Contracting Company. I have read the affidavit of Joseph Konrad, verified October 3rd, 1907. I deny that it was any object or purpose of this suit or reason therefor, or any object of the application for the appointment of said receivers, or the purpose of or the reason therefor, to delay the trial of the suits mentioned in paragraph four of the alleged petition incorporated in said affidavit, or any other suits, or to avoid the payment of the claims which are the foundation of such suits or any other claims; or to delay proceedings for collection of any taxes. I deny that it was the purpose of the suit or of the application for the

receivership to impede the further examination into the books and papers of the defendant, the New York City Railway Company by the Public Service Commission or in any other way to hinder or impede such Commission, and I deny that such application was made for stock jobbing purposes or to promote speculation in the stock of said defendant or of any other corporation or to procure the continuance of the payment of large, excessive or exorbitant salaries to officers, superintendents, agents or employees of the defendant or of corporations controlled by the defendant or for any wrongful purpose or with any wrongful object.

I deny that any counsel's fees have been paid to the counsel or solicitors of the complainants out of the funds of said defendant or by persons controlling or in any way connected with the defendant.

In regard to the statements in said affidavit to the effect that the suit does not involve any substantial dispute between the parties within the jurisdiction of the Court, I submit that such statements are merely deponent's conclusions from the facts which are before the Court and that they are not correct conclusions. The defendant was indebted to the complainants and refused to pay such indebtedness, and manifestly there was a controversy between them which is within the jurisdiction of this Court.

I admit that the suit was brought in this Court for the purpose of having this Court take jurisdiction of the suit, but I deny absolutely as to the Degnon Contracting Company and on information and belief as to the Pennsylvania Steel Company, that there was any impropriety or collusion or anything else wrongful in the conduct of either of the complainants, and I allege that as non-residents of the State of New York, the complainants had under the laws of the United States, an absolute right to decide whether they would bring this suit in the Courts of the United States or in the Courts of the State of New York; I deny that the object of this suit is anything else than it appears to be on the

face of the bill of complaint, viz; the administration of the assets of the defendant in a proper Court having jurisdiction thereof; at the time of the beginning of this suit I believed, and I now believe, that this Court was the proper one in which the interests of complainants this suit should be instituted and this Court was therefore selected; I deny absolutely as to the Degnon Contracting Company all charges of collusion, or suppression of facts and all wrongdoing on the part of the complainant, the Degnon Contracting Company of any kind or nature, and I deny said charges on information and belief as to the Pennsylvania Steel Company.

(Signed) NATHANIEL J. HAYWOOD.

Subscribed and sworn to before me this 7th of October, 1907.

EDWIN L. DUNBAR,
Notary Public,
New York County,
New York.

My commission expires March 30th, 1908.

Filed 28th October, 1907.

Exhibit O.

Order Denying the Petition of Daniel Gallagher and Others.

At a Stated Term of the Circuit Court of the United States for the Southern District of New York in the Post Office Building, New York City, on the 6th day of November, 1907.

Before HONORABLE E. HENRY LACOMBE, United States Circuit Judge.

PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY

AGAINST

THE NEW YORK CITY RAILWAY COMPANY.

IN THE MATTER

OF

The Application of DANIEL GALLAGHER and FRANCIS S. REISENBERG for leave to intervene.

Daniel Gallagher and Francis S. Riesenberg having presented a petition for leave to intervene in the above entitled suit in equity; now, after hearing Roger Foster, Esq., in support of said petition, and James Byrne, Esq., in opposition thereto, it is hereby

ORDERED that the said petitioners have leave to file said petition; and that the same hereby is directed to

be filed accordingly; and that the complainants herein have leave to file the affidavits presented in opposition to said petition; and that the same hereby are filed accordingly; and that the prayer of said petition be and the same hereby is denied.

Filed 6th November, 1907.

Exhibit P.

Decree Appointing Special Master to take Proof of Claims of Defendant Metropolitan Street Railway Company.

IN THE CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY,

AGAINST

NEW YORK CITY RAILWAY COMPANY ET AL.

And now, on this 18th day of November, 1907, this cause came on further to be heard upon the pleadings and the petition of Metropolitan Street Railway Company, verified the 1st day of October, 1907, to be made a party defendant herein, and upon all the proceedings had in the cause, whereupon, on further consideration thereof, the solicitors for all the parties being before the Court, it is

ORDERED, ADJUDGED AND DECREED as follows, namely: The Court finds that the defendant, Metropolitan Street

Railway Company, is insolvent and that its assets and property of every description constitute a fund in which the creditors of said defendant are interested, and that the assets of said corporation should be marshalled and the nature and extent of the rights, liens, equities and priorities of the several creditors thereof should be ascertained and decreed by the Court.

And it is further ORDERED, ADJUDGED AND DECREED that it be referred to William L. Turner, Esquire, heretofore appointed Special Master in this cause, to take proof of the amount of all claims and demands against the said Metropolitan Street Railway Company and to report the same to this Court with all convenient speed.

And it is further ORDERED, ADJUDGED AND DECREED that all claims and demands against the said defendant shall be presented to the said Special Master on or before the fifteenth day of January, 1908, and that said Special Master give public notice accordingly by publication twice in each week for a period of three weeks in at least two daily newspapers published in the City of New York to be selected by him, which said notice shall also contain a statement of the time and place of the first hearing before said Special Master.

And it is further ORDERED, ADJUDGED AND DECREED that Adrian H. Joline and Douglas Robinson, the Receivers heretofore appointed herein file their accounts with the said Special Master on the 10th day of January, 1908, covering the period from September 24th, 1907, to and including December 31st, 1907, and shall file their accounts every two months thereafter, and that said Special Master shall examine the same and report thereon to the Court from time to time.

And all other questions not hereby disposed of and determined are reserved for further adjudication.

Dated New York City, November 8th, 1907.

E. HENRY LACOMBE,

U. S. C. J.

Filed 9th November, 1907.

Exhibit Q.

Petition of Morton Trust Company.

IN THE CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER
OF
THE PETITION OF MORTON TRUST COMPANY.

TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK:

The petition of Morton Trust Company, a corporation organized and existing under the laws of the State of New York, alleges as follows:

I. Your petitioner is a corporation organized and existing under the laws of the State of New York.

II. At all times hereinafter mentioned Metropolitan Street Railway Company was and still is a corporation duly organized and existing under the laws of the State of New York.

III. Heretofore by its mortgage or deed of trust, dated March 21, 1902, the said Metropolitan Street Railway Company, in order to secure an issue of bonds not exceeding in the aggregate the principal sum of $65,000,000 at any time outstanding, payable April 1, 2002, with interest at the rate of 4% per annum, payable semi-annually on the first

days of April and October, did grant and convey unto Morton Trust Company as trustee all the street surface railroads and property owned by it, and all the street surface railroads and property held or operated by it as lessee under certain leases as in said mortgage or deed of trust more specifically described.

Said Metropolitan Street Railway Company thereafter and in accordance with the provisions of said mortgage or deed of trust, issued its bonds, secured by said mortgage, to the amount of $16,604,000.00, as your petitioner is informed and believes, and the same are now outstanding in the hands of *bona fide* owners and holders for value, and are, as your petitioner is advised, a lien upon the property of the said Metropolitan Street Railway Company described in said mortgage. For a particular statement of the terms and conditions of said mortgage, your petitioner prays leave to refer thereto.

IV. Said mortgage provides among other things, that the mortgagor should pay all amounts payable under any lease mortgaged thereby. Among the leases so mortgaged to your petitioner is the lease of the Third Avenue Railroad Company to the Metropolitan Street Railway Company dated April 13, 1900, under which a certain rental became due and payable by the Metropolitan Street Railway on October 13, 1907. The Metropolitan Street Railway County and its Receivers have failed to pay said rental, as your petitioner is informed and believes, and is in default thereunder and has thereby made default in the performance of the covenants and conditions to be performed by it under said mortgage.

Persons owning or representing, as your petitioner is informed, a large amount of bonds issued under and secured by said mortgage to your petitioner dated March 21, 1902, have requested your petitioner to institute judicial proceedings for foreclosure of said mortgage.

V. In a suit in this Court in which The Pennsylvania Steel Company and The Degnon Contracting Company were complainants and New York City Railway Company defendant by an order of this Court made on September 24, 1907, Adrian H. Joline and Douglas Robinson were appointed receivers of the New York City Railway Company and they duly qualified as such receivers and entered upon the possession of said property and are now acting as such receivers and as such are in possession of the property of the New York City Railway Company.

Thereafter and on or about October 1, 1907, the Metropolitan Street Railway Company on its petition, was made a party to said cause and Adrian H. Joline and Douglas Robinson were appointed receivers of the properties of Metropolitan Street Railway Company and thereafter they duly qualified as such receivers, and they are now both as receivers of the Metropolitan Street Railway Company and as receivers of the New York City Railway Company in possession of all the railroads, properties and franchises described in said mortgage to your petitioner, dated March 21, 1902.

Thereafter your petitioner filed its bill in this Court (due leave having been granted to it) against Metropolitan Street Railway Company, New York City Railway Company, Adrian H. Joline and Douglas Robinson as Receivers of New York City Railway Company, Adrian H. Joline and Douglas Robinson as Receivers of Metropolitan Street Railway Company, The Pennsylvania Steel Company and The Degnon Contracting Company, praying that the income and profits of the mortgaged property be applied in accordance with the provisions of said mortgage and thereafter and on or about October 9, 1907, by an order of this Court, said Adrian H. Joline and Douglas Robinson were appointed Receivers of the properties of the said Metropolitan Street Railway Company and they duly qualified as such and are now, both as Receivers of the said Metropolitan Street Railway Company and as Receivers of

the New York City Railway Company in possession of all the railroads, properties and franchises described in said mortgage to your petitioner dated March 21, 1902.

VI. Your petitioner is about to file in this Court a bill for the foreclosure of said mortgage dated March 21, 1902, and desires to make the said Adrian H. Joline and Douglas Robinson, who, as Receivers as aforesaid, are now in possession of said property embraced in said mortgage, parties thereto.

Your petitioner therefore prays that by an order of this Court it may be permitted to make the said Adrian H. Joline and Douglas Robinson parties to said bill to be filed by it, and it may have such other and further relief as may be just.

MORTON TRUST COMPANY,
By H. M. FRANCIS,
Secretary,
Petitioner.

(SEAL)

BRONSON WINTHROP,
Solicitor for Petitioner.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:
CITY AND COUNTY OF NEW YORK.

HARRY M. FRANCIS, being duly sworn, doth depose and say that he is the Secretary of Morton Trust Company, the petitioner named in the foregoing petition. That he has read the foregoing petition and knows the contents thereof and that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes the same to be true.

H. M. FRANCIS.

Sworn to before me this 8th day of November, 1907.

J. A. BRODERICK,
Notary Public,
N. Y. County.

(SEAL)

Filed 9th November, 1907.

Exhibit Q2.

Order Making Receivers Parties to Bill to Foreclose Mortgage.

THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of MORTON TRUST COMPANY.

And now comes the above named petitioner and files its petition, praying for leave to make Adrian H. Joline and Douglas Robinson heretofore appointed by this Court Receivers of Metropolitan Street Railway Company and of New York City Railway Company, parties to the bill to foreclose the mortgage or deed of trust, dated March 21, 1902, and executed by Metropolitan Street Railway Company to the petitioner as trustee, which bill is to be filed by the petitioner; on consideration whereof, it is on motion of Bronson Winthrop, Esq., solicitor for said petitioner.

ORDERED that the prayer of said petition be granted, and that said petitioner have leave to make the said Adrian H. Joline and Douglas Robinson as Receivers of New York City Railway Company and said Adrian H. Joline and Douglas Robinson as Receivers of Metropolitan Street Railway Company parties to the said bill of foreclosure.

November 9th, 1907.

E. HENRY LACOMBE,
U. S. C. J.

Filed 9th November, 1907.

Exhibit R.

Bill of Foreclosure.

CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

MORTON TRUST COMPANY, Complainant, AGAINST METROPOLITAN STREET RAILWAY COMPANY, NEW YORK CITY RAILWAY COMPANY, ADRIAN H. JOLINE and DOUGLAS ROBINSON as Receivers of New York City Railway Company, ADRIAN H. JOLINE and DOUGLAS ROBINSON as Receivers of Metropolitan Street Railway Company, THE PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY, Defendants.	In Equity. Bill of Foreclosure.

TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK:

Morton Trust Company, a corporation organized and existing under the laws of the State of New York and a citizen of said State, brings this its bill against Metropolitan Street Railway Company, a corporation organized and existing under and by virtue of the laws of the State of New York and a citizen of said State, New York City Railway Company, a corporation

organized and existing under and by virtue of the laws of the State of New York and a citizen of said State, Adrian H. Joline and Douglas Robinson, both citizens of the State of New York, as receivers of said New York City Railway Company, said Adrian H. Joline and Douglas Robinson as Receivers of said Metropolitan Street Railway Company, The Pennsylvania Steel Company, a corporation organized and existing under the laws of the State of Pennsylvania and a citizen of said State, and The Degnon Contracting Company, a corporation organized and existing under the laws of the State of New Jersey and a citizen of said State; and thereupon your orator complains and says as follows:

I. Your orator is a corporation duly organized and existing under and by virtue of the laws of the State of New York and a citizen of said State.

II. On information and belief, the defendant Metropolitan Street Railway Company (hereinafter in this bill called the Metropolitan Company) is a corporation organized and existing under the laws of the State of New York and a citizen of said State, having been organized by a merger and consolidation at divers times of Houston, West Street & Pavonia Ferry Railroad Company, Broadway Railway Company, South Ferry Railroad Company, The Metropolitan Crosstown Railway Company, The Lexington Avenue & Pavonia Ferry Railroad Company and The Columbus and Ninth Avenue Railroad Company, all of said companies having been street surface railroad companies organized and existing under the laws of the State of New York.

On information and belief, the defendant New York City Railway Company (hereinafter in this bill called the New York Company) is a corporation organized and existing under the laws of the State of New York and a citizen of said State. Said defendant was so organized under the name and style of "Interurban

Street Railway Company" and subsequently and pursuant to proceedings duly had, changed its name to "New York City Railway Company."

On information and belief, the defendant The Pennsylvania Steel Company is a corporation duly organized and existing under the laws of the State of Pennsylvania, and a citizen of said State, and the defendant The Degnon Contracting Company is a corporation duly organized and existing under the laws of the State of New Jersey and a citizen of said State.

III. Heretofore and prior to March 21, 1902, the defendant Metropolitan Company in the exercise of its powers under the laws of the State of New York, and in accordance with resolutions duly passed by its board of directors and by its stockholders at respective meetings thereof duly called and held, duly authorized the issue of a series of bonds to be executed under its corporate seal and attested by the signatures of its president or one of its vice-presidents, and attested by its secretary or an assistant secretary, and to be issued to an amount not exceeding in the aggregate the principal sum of sixty-five million dollars ($65,000,000) at any one time outstanding; said bonds to be either coupon or registered, the coupon bonds bearing date April 1, 1902, and the registered bonds bearing date at the time of their respective issue; by the terms of which bonds the Metropolitan Company promised to pay, in the case of coupon bonds, to the bearer thereof, and, in the case of registered bonds, to the registered owner thereof or his assigns, at the office or agency of the Metropolitan Company in the City of New York on the first day of April in the year 2002, the sum of one thousand dollars ($1,000) in the case of coupon bonds and the sum of one thousand dollars ($1,000) or multiples thereof in the case of registered bonds, gold coin of the United States of America, of or equal to the then standard of weight and fineness, and to pay interest thereon, in the case of coupon bonds, from April 1, 1902, and, in the

case of the registered bonds, from the first day of April or October, as the case might be, next preceding the date thereof, payable at its said office in like gold coin, semi-annually on the first days of April and October in each year, in the case of coupon bonds, upon presentation and surrender, as they might severally mature, of the interest coupons thereto annexed, and, in the case of registered bonds, to the registered owner thereof or his assigns. The form and tenor of said bonds are set forth at large in the mortgage hereinafter referred to.

IV. On or about March 21, 1902, the Metropolitan Company being thereunto duly authorized by the action of its board of directors and with the consent of stockholders owning at least two-thirds of the entire capital stock of the Metropolitan Company, such stock having been represented and voted upon in person or by proxy at a special meeting of the stockholders duly called for that purpose, in pursuance to the statute in such case made and provided, and with the consent of the Board of Railroad Commissioners of the State of New York, the consent of said stockholders evidenced by a sworn certificate of the vote of said meeting and the consent of said Board, both in due form, having been contemporaneously filed and recorded in accordance with law in the office of the Register of the County of New York in which County the Metropolitan Company had its principal place of business and wherein its property was situated, duly made, executed and delivered to your orator, as trustee, its certain mortgage or deed of trust dated on that day, wherein and whereby in order to secure the payment of the principal and interest of all such bonds at any time issued and outstanding and to secure the performance and observance of all the covenants and conditions in said mortgage contained it granted, bargained, sold, released, conveyed, assigned, transferred and set over unto your orator, as trustee, its successors and assigns forever, all and singular, the railroads, railroad routes,

estates, leaseholds, properties, rights, privileges and franchises described as follows, to wit:

I.

STREET SURFACE RAILROADS IN THE COUNTY OF NEW YORK, CITY OF NEW YORK, AND STATE OF NEW YORK, OWNED BY THE METROPOLITAN STREET RAILWAY COMPANY, DESCRIBED AS FOLLOWS:

HOUSTON, WEST STREET AND PAVONIA FERRY, OR AVENUE C LINE.

Commencing at the intersection of Duane Street with West Street, thence through and along Duane Street with a double track to Greenwich Street, thence through and along Greenwich Street with a single track to Charlton Street, thence through and along Charlton Street with a single track to Prince Street, thence through and along Prince Street with a single track to Bowery, thence upon and across the Bowery with a single track to Stanton Street, thence through and along Stanton Street with a single track to Pitt Street, thence through and along Pitt Street with a single track to Avenue C, thence through and along Avenue C, with a single track to Third Street, thence through and along Avenue C, from Third Street with a double track to the northern extremity of the said Avenue C, thence through and along Third Street, connecting with the double track in Avenue C, with a single track to First Avenue, thence through and along First Avenue with a single track to East Houston Street, thence through and along East Houston Street with a single track to the Bowery, thence upon and across the Bowery with a single track to West Houston Street, thence through and along West Houston Street, with a single track to Washington Street, thence through and along Washington Street with a single track to Duane Street; thence through and along Duane Street, connecting with the double track to the place of beginning, being the route

described in Chapter 625 of the Laws of 1868 of the State of New York.

Extension on Avenue C Through Seventeenth Street, Etc.

From Avenue C through Seventeenth and Eighteenth Streets, by single track in each street, to Avenue A, thence through and along Avenue A, by double track to Twenty-third Street; thence through and along Twenty-third Street, by double ttack to First Avenue; thence through and along First Avenue, by double track, to Thirty-sixth Street; thence through and along Thirty-sixth Street, by single track, to Lexington Avenue; and also through and along Thirty-fifth Street, by single track, from First Avenue to Lexington Avenue; thence through and along Lexington Avenue, by single or double track, to Forty-second Street; thence through and along Forty-second Street by double track to Fourth Avenue. Also, by single track through and along Charlton Street, from Greenwich Street to West Street; and, by single track, through and along West Houston Street, from Washington Street to West Street; thence through and along West Street by double track, to Chambers Street. Also, through and along Tenth Street, connecting with the double track in Avenue C, by single track to Avenue D; thence through and along Tenth Street by double track to the East River. Also, connecting with the double track on Tenth Street through and along Avenue D, by single track, to Eleventh Street; thence through and along Eleventh Street, by single track, to and connecting with the double track on Avenue C, being the route described in Chapter 19 of the Laws of 1871 of the State of New York.

Chamber Street and Grand Street Ferry Line.

Commencing at the foot of Roosevelt Street, East River, thence through, upon and along South Street, with

double tracks to James Slip ; thence through, upon and along James Slip, with double tracds, to New Chambers Street ; thence through, upon and along and New Chambers Street to Chatham Street, with double tracks ; thence across Chatham Street to Chambers Street, with single track ; thence through, upon and along Chambers Street, with single track, to Pavonia Avenue Ferry, foot of Chambers Street, North River ; thence returning with single or double tracks, through, upon and along West Street to Duane Street ; thence through, upon and along Duane Street, with single track to and across Chatham Street to connect with the double tracks at New Chambers Street. Also from New Chambers Street, at Madison Street, through, upon and along Madison Street, with double tracks to Grand Street thence through, upon and along Grand Street, with single or double tracks to the ferry at the foot of Grand Street. Also, from Madison Street, at Jackson Street, through, upon and along Jackson Street, with double or single tracks to Cherry Street ; thence through, upon and along Cherry Street, with double or single tracks to the East River; thence through, upon and along East Street, with double or single tracks, to connect with the tracks at the foot of Grand Street, East River, being the route described in the resolution of the Common Council of the City of New York, adopted on December 30, 1884.

Broadway Surface Line.

Commencing at the southerly end of Broadway near the Battery and running thence with double tracks through and along Broadway, and across Fourteenth Street to and along Union Square to a point at or near the intersection of Fifteenth Street and West Union Square, being the route described in the resolution of the Common Council of the City of New York, adopted December 5, 1884.

South Ferry Line.

Commencing at the northerly side of Vesey Street; thence through, upon and along Church Street, with double track to Morris Street; thence through, upon and along Morris Street, with a double track to Greenwich Street; thence through, upon and along Greenwich Street, with a double track to Battery Place; thence through, upon and along Battery Place, with a double track to State Street; thence through, upon and along State Street with a single track, to Whitehall Street; thence through, upon and along Whitehall Street, with a single track to the South Ferry; returning through, upon and along Whitehall Street to Bowling Green; thence through, upon and along the southerly side of Bowling Green to connect with double tracks at Battery Place, being the route described in Chapter 508 of the Laws of 1874 of the State of New Yo.k.

Metropolitan Cross-Town Line.

Commencing upon East Street, at or near the Grand Street Ferry, and running thence through, upon and along East Street, with a double track to Delancey Slip or Street; thence through, upon and along Delancey Street, with a double track, to the Bowery; thence through, upon and across the Bowery to Spring Street; thence through, upon and along Spring Street, with a double track, to South Fifth Avenue; thence through, upon and along South Fifth Avenue, with a double track, to Fourth Street; thence through, upon and along Fourth Street, with a double track to Macdougal Street; thence through, upon and along Macdougal Street, with a double track, to Waverly Place; thence through, upon and along Waverly Place, to Christopher Street, with a double track; thence through and along Waverly Place, from Christopher Street to Bank Street with a single track; thence through, upon and along Bank Street, with a

double track to Greenwich Avenue; thence through, upon and along Greenwich Avenue, wtth a double track, to Thirteenth Street and Horatio Street; thence through, upon and along Thirteenth Street and Horatio Street, with a single track, to Eighth Avenue; thence through, upon and across Eighth Avenue to Thirteenth Street; thence through, upon and along Thirteenth Street, with a double track, to Thirteenth Avenue; thence through, upon and along Thirteenth Avenue, with a double track, to Fourteenth Street, being the route described in the resolution of the Common Council of the City of New York, adopted December 24, 1889.

Lexington Avenue and Pavonia Ferry Line.

Commencing at Forty-second Street, in the City of New York, at a point of connection with the tracks of the Houston, West Street and Pavonia Ferry Railroad Company, at the junction of said street with Lexington Avenue; thence on and over said Lexington Avenue, with double tracks, to Harlem River, with further construction and extensions from the junction of One hundred and Sixteenth Street and Lexington Avenue, through One hundred and Sixteenth Street to Morningside Park and to the East River, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Columbus Avenue and Ninth Avenue Line.

Commencing in Columbus Avenue, in the City of New York, at or near Sixty fourth Street, there to connect with the existing double track of the Ninth Avenue Railroad Company in said avenue; thence running across the surface of the Boulevard and upon, along and over the surface of Columbus Avenue (formerly Ninth Avenue) with double tracks to One hundred and tenth Street; also from Columbus Avenue, with double tracks through and along One

hundred and sixth Street to Amsterdam Avenue, to connect with the existing double track in Amsterdam Avenue (formerly Tenth Avenue), then owned by the Ninth Avenue Railroad Company, being the route described in the resolution of the Common Council of the City of New York, adopted October 10, 1892.

FORT LEE FERRY EXTENSION.

Commencing at the intersection of One hundred and twenty-fifth Street and Amsterdam Avenue (formerly Tenth Avenue), running thence westerly, through One hundred and twenty-fith Street to the Boulevard, thence northerly through the Boulevard to One hundred and thirtieth Street and thence westerly, through One hundred and thirtieth Street westerly to Twelfth Avenue, to a point on the west side of said avenue at or near Manhattan Street and at or near Fort Lee Ferry, being the route described in the resolution of the Common Council of the City of New York, adopted December 19, 1893.

COLUMBUS AND NINTH AVENUE RAILROAD CONNECTION AND EXTENSION ON ONE HUNDRED AND NINTH STREET.

Commencing at the intersection of Columbus Avenue at One hundred and ninth Street, and connecting there by suitable curves, switches and appliances with the road of the Columbus and Ninth Avenue Railroad Company, running thence easterly with double tracks, through, upon and along One hundred and ninth Street to Manhattan Avenue; thence northerly, upon Manhattan Avenue, with double tracks, to the southerly side of Cathedral Parkway (formerly One hundred and tenth Street), there to unite with an extension or branch of the Metropolitan Street Railway Company, being the route described in the resolution of the Common Council of the City of New York, adopted September 18, 1894.

METROPOLITAN STREET RAILWAY CONNECTION AND EXTENSION ON MANHATTAN STREET.

Commencing at the intersection of Manhattan Avenue and One hundred and sixteenth Street, and connecting there by suitable curves, switches and appliances with the road of the Metropolitan Street Railway Company, running thence southerly, with double tracks, through, upon and along Manhattan Avenue to the southerly side of Cathedral Parkway (formerly One hundred and tenth Street), there to unite with an extension or branch of the Columbus and Ninth Avenue Railroad Company, being the route described in the resolution of the Common Council of the City of New York, adopted September 18, 1894.

HOUSTON, WEST STREET AND PAVONIA FERRY CONNECTION AND EXTENSION ON RIDGE STREET AND MONTGOMERY STREET.

Commencing at the intersection of Houston Street and Avenue C in the City of New York, connecting there by suitable curves and appliances with the route of the Houston, West Street and Pavonia Ferry Railroad Company, running thence through, upon and along Houston Street over the single track in said Street of the road of the Forty-second Street and Grand Street Ferry Railroad Company to Ridge Street; thence (with suitable curves and appliances at or near Ridge Street) through, upon and along Ridge Street with a single track to the said point of union, and by the construction, maintenance and operation of an extension or branch of the said railroad formerly of the Chambers Street and Grand Street Ferry Railroad Company, commencing at the intersection of Montgomery Street and Madison Street, connecting there by suitable curves and applances with the said road formerly of the Chambers Street and Grand Street Ferry Railroad Company, running thence with a single track, through, upon and along Mont-

gomery Street to Division Street; thence through, upon and across Division Street to Ridge Street; thence through, upon and along Ridge Street with a single track to the said point of union, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

HOUSTON, WEST STREET AND PAVONIA FERRY RAILROAD CONNECTION AND EXTENSION ON PITT STREET AND GOUVERNEUR STREET.

Commencing at the intersection of Third Street and Avenue C, connecting there by suitable curves and appliances with the tracks of the Houston, West Street and Pavonia Ferry Railroad Company, and running thence with an additional single track through, upon and along Avenue C to and across Houston Street to Pitt Street, there to connect by suitable curves and appliances with the existing single track of the Houston, West Street and Pavonia Ferry Railroad Company in Pitt Street, and running thence through, upon and along Pitt Street over the said single track in said street to Stanton Street; thence (with suitable connections and curves at Stanton Street) upon and across Stanton Street with a single track; thence through, upon and along Pitt Street to said point of Union; and by the construction, maintenance and operation of an extension or branch of the railroad formerly of the Chambers Street and Grand Street Ferry Railroad Company, commencing at the intersection of Gouverneur Street and Madison Street, connecting there by suitable curves and appliances with the said road formerly of the Chambers Street and Grand Street Ferry Railroad Company, running thence, with a single track, through, upon and along Gouverneur Street to and across Grand Street; thence with a single track through, upon and along Pitt Street to said point of union, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Metropolitan Cross-Town Connection and Extension on West Third Street.

Commencing at the intersection of South Fifth Avenue and West Third Street, connecting there by suitable curves and attachments with the road of The Metropolitan Cross-Town Railway Company, and running thence westerly with double tracks through, upon and along West Third Street to a point of union with an extension or branch of the railroad of the Sixth Avenue Railroad Company, at or near Sullivan Street, being the route described in the resolution of the Common Council of the City of New York adopted September 29, 1892.

Metropolitan Cross-Town Connection and Extension on Broome, Sullivan and Watts Streets.

From a connection with the route of The Metropolitan Cross-Town Railway Company on South Fifth Avenue, at the intersection of Broome Street, by suitable curves and appliances thence with double tracks through, upon and along Broome Street to Sullivan Street; thence through upon and along Sullivan Street with double tracks to Watts Street; thence through, upon and along Watts Street with double tracks to a union with the route and road of the Houston, West Street and Pavonia Ferry Railroad Company, then on West Street, and to connect also with Desbrosses Street Ferry, said branch over said streets to said union of the routes or road of The Metropolitan Cross-Town Railway Company when built on South Fifth Avenue to Broome Street, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Metropolitan Cross-Town Connection and Extension on South Fifth Avenue.

Commencing at South Fifth Avenue and Spring Street, connecting there by suitable curves and appliances with the existing road of the Metropolitan Cross-Town Railway Company, and running thence southerly with double tracks through, upon and along South Fifth Avenue to Broome Street, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Houston, West Street and Pavonia Ferry Connection and Extension on Lexington Avenue.

Along and over Lexington Avenue from Twenty-seventh street to Thirty-fifth Street by double track, and by single track from Thirty-fifth Street to Thirty-sixth Street, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Metropolitan Street Railway Connection and Extension on West Broadway.

Commencing at the intersection of West Broadway and Duane Street, and connecting there by suitable curves, switches and appliances with the Metropolitan Street Railway Company's existing tracks in said Duane Street, running thence southerly in or upon West Broadway, with double tracks to Chamber Street, and thence southerly with double tracks, in or upon West Broadway (a portion of which was formerly College Place), to Vesey Street, there to connect with a double track extension or branch of the railroad and route of the Central Park, North and East River Railroad Company, being the route described in the resolution of the Common Council of the City of New York, adopted April 14, 1896.

II.

REAL ESTATE OWNED BY THE METROPOLITAN STREET RAILWAY COMPANY, BEING THE FOLLOWING DESCRIBED PIECES AND PARCELS OF LAND WITH THE BUILDINGS AND IMPROVEMENTS THEREON, SITUATE, LYING AND BEING IN THE COUNTY OF NEW YORK, CITY OF NEW YORK, AND STATE OF NEW YORK.

A. REAL ESTATE NOT SUBJECT TO THE METROPOLITAN STREET RAILWAY COMPANY'S GENERAL AND COLLATERAL TRUST MORTGAGE.

LEXINGTON AVENUE AND THIRTY-THIRD STREET PROPERTY.

All that certain plot, piece or parcel of land with the buildings thereon erected, situate, lying and being in the City and County of New York, bounded and described as follows: Beginning at a point formed by the intersection of the easterly line of Park (formerly Fourth) Avenue, with the northerly line or side of Thirty-second Street; running thence northerly along the easterly side of Park Avenue, one hundred ninety-seven (197) feet six (6) inches to the southeasterly corner of Park Avenue and Thirty-third Street; thence easterly along the southerly side of Thirty-third Street, four hundred twenty-five (425) feet to the southwesterly corner of Thirty-third Street and Lexington Avenue, thence southerly along the westerly side of Lexington Avenue, one hundred forty-eight (148) feet one (1) inch; thence westerly parallel or nearly so with Thirty-third Street, forty-eight (48) feet four (4) inches; thence southerly and nearly parallel with Lexington Avenue, forty-nine (49) feet five (5) inches to the northerly side of Thirty-second Street, at a point distant forty-eight (48) feet four (4) inches westerly from the westerly side of Lexington Avenue; thence westerly along the northerly side of Thirty-second Street, three hundred seventy-six (376) feet

eight (8) inches to the point or place of beginning; being the same premises heretofore conveyed to The New York and Harlem Railroad Company by the following instruments, to wit: Deed from Mary Murray, dated January 8, 1849, and recorded in the office of the Register of the County of New York in Liber 518 of Conveyances, page 420; deed from Nathan Jackson and wife, dated February 22, 1849, and recorded in said Register's Office in Liber 558 of Conveyances, page 215; deed from John Alstyne, dated December 13, 1851, and recorded in said Register's Office in Liber 590 of Conveyance, page 226; deed from Henry Abell and wife, dated September 1, 1865, and recorded in said Register's Office, in Liber 947 of Conveyances, page 251; deed from Jesse A. Marshall and wife, John F. Marshall and William H. Wilkins and wife, dated June 1, 1875, and recorded in said Register's Office in Liber 1333 of Conveyances, page 51; deed from Peter S. Bogart and wife, dated December 10, 1849, and recorded in said Register's Office in Liber 537 of Conveyances, page 447, and which premises were conveyed by The New York and Harlem Railroad company to Oren Root, Junior, by deed bearing date September 6, 1899, and recorded in the office of the Register of the County of New York on September 11, 1899, in Block Series (Conveyances), Section 3, Liber 65, page 136, and indexed under Block Number 888, and Section 5, Liber 63, page 307, and indexed under Block Number 1497, and were conveyed by Oren Root, Jr., to the Metropolitan Street Railway Company by indenture dated September 22, 1899, subject to a mortgage made by the said Root to the Mutual Life Insurance Company, dated September 20, 1899, to secure the payment of the sum of $950,000 and interest.

85TH AND 86TH STREETS AND MADISON AVENUE PROPERTY.

Also, all those certain lots, pieces or parcels of land, with the buildings and improvements thereon, situate, lying and being in the City and County of New York,

bounded and described as follows: Beginning at a point formed by the intersection of the northerly side of Eighty-fifth Street and the westerly side of Madison Avenue, and running thence westerly along the nortyerly side of said Eighty-fifth Street, two hundred twenty (220) feet; thence northerly parallel with Madison Avenue two hundred four (204) feet four (4) inches, to the southerly side of Fighty-sixth street; thence easterly along the southerly side of Eighty-sixth Street, two hundred twenty (220) feet to the southwesterly corner of Eighty-sixth Street and Madison Avenue; and thence southerly along the westerly side of Madison Avenue two hundred four (204) feet four (4) inches to the point or place of beginning; being the same premises heretofore conveyed to The New York and Harlem Railroad Company by the following instruments, to wit: Deed from Webster Wagner and wife, dated November 5, 1891 and recorded in the office of the Register of the County of New York, in Liber 1923 of Conveyances, page 203; deed from George B. Heath, dated December 3, 1886, and recorded in said Register's Office, in Liber 1998 of Conveyances, page 468; deed from Clark R. Gavit, dated December 22, 1885, and recorded in said Register's Office in Liber 2273 of Conveyances, page 333; deed from Webster Wagner and wife, dated November 12, 1881, and recorded in said Register's office, in Liber 1912 of Conveyances, page 342; deed from Warren S. Crane, dated November 21, 1889, and recorded in said Register's Office, in Liber 2273 of Conveyances, page 331, and deed from James M. Gotendorf and others, dated August 12, 1885, and recorded in said Register's Office, in Liber 1912 of Conveyances, page 347; and which premises were conveyed by The New York and Harlem Railroad Company to Oren Root, Junior, by deed bearing date September 6, 1899, and recorded in the office of the Register of the County of New York on September 11, 1899, in Block Series (Conveyances), Section 6, Liber 65, page 136, and indexed under Block Number 888, and Section 5, Liber 63, page 307,

and indexed under Block Number 1497, and were conveyed by Oren Root, Jr., to the Metropolitan Street Railway Company by indenture dated September 22, 1899, subject to a mortgage made by the said Root to the Mutual Life Insurance Company dated September 20, 1899, to secure the payment of the sum of $950,00, and interest.

146th Street, 147th Street, Lenox Avenue and 7th Avenue Property.

All that certain lot, piece or parcel of land, situate, lying and being in the Twelfth Ward in the City of New York, bounded and described as follows: Beginning at a point on the westerly side of Lenox Avenue (formerly Sixth Avenue) at a point distant one hundred (100) feet north of the corner formed by the intersection of the northerly side of One hundred and forty-sixth Street with the westerly side of Lenox Avenue, running thence northerly along the westerly side of said Lenox Avenue to the corner formed by the intersection of the westerly side of Lenox Avenue and the southerly side of One hundred and forty-seventh Street, running thence westerly along the southerly side of One hundred and forty-seventh Street, to the corner formed by the intersection of the southerly side of One hundred and forty-seventh Street with the easterly side of Seventh Avenue, running thence southerly along the easterly side of said Seventh Avenue to the corner formed by the intersection of the easterly side of Seventh Avenue with the northerly side of One hundred and forty-sixth Street, running thence easterly along the northerly side of One hundred and forty-sixth Street to a point distant four hundred forty (440) feet westerly from the corner formed by the intersection of the northerly side of One hundred and forty-sixth Street with the westerly side of Lenox Avenue, (formerly Sixth Avenue), thence running northerly and parallel with the westerly side of Lenox Avenue aforesaid one hundred (100) feet, thence running eastwardly

and parallel with the northerly side of One hundred and forty-sixth Street four hundred forty (440) feet to the point or place of beginning; conveyed by indenture dated September 30, 1897, from The Metropolitan Traction Company of New York to the Metropolitan Street Railway Company and which indenture was recorded in the Office of the Register of the City and County of New York, on October 4, 1897, in Block Series (Conveyances) Section 7, Liber 48, page 99, and indexed under Block Number 2015 on the Land Map of the City of New York, and being part of the land which was conveyed to the Metropolitan Traction Company of New York by Charles D. Lane and Rosa G., his wife, by deed dated July 1, 1894, and recorded in the Office of the Register of the City and County of New York on July 17, 1894, in Block Series (Conveyances) Section 7, Liber 22, page 384, and indexed under Block Number 2015 on the land map of the City of New York, and being subject to a mortgage of $150,000, with 5 per cent. per annum given by John D. Crimmins to the Mutual Life Insurance Company, dated February 20, 1893, and recorded in the Office of the Register of the City and County of New York on February 20, 1893, in Block Series (Mortgages), section 7, Liber 23, page 301, and being also subject to the restrictions and covenants contained in a certain grant of the Mayor, Aldermen and Commonalty of the City of New York to Mary G. Pinckney, dated November 7, 1867, and recorded in the Register's Office of the City and County of New York, on November 15, 1867, in Liber 1041 of Conveyances, page 1, in so far as the same affects the said described premises.

Also that certain lot, piece or parcel of ground with the buildings thereon erected, situate, lying and being in the Twelfth Ward of the City of New York and bounded and described as follows: Commencing at the intersection of the northerly side of One hundred and forty-sixth Street with the westerly side of Lenox Avenue (Formerly Sixth Avenue), running thence northerly along the westerly side of Lenox Avenue

one hundred (100) feet or thereabouts; running thence westerly and parallel with the northerly side of One hundred and forty-sixth Street four hundred forty (440) feet or thereabouts; running thence southerly and parallel with the westerly side of Lenox Avenue one hundred (100) feet to the northerly side of One hundred and forty-sixth Street; and thence easterly along the northerly side of One hundred and forty-sixth Street four hundred forty (440) feet or thereabouts to the point or place of beginning; being a portion of the premises heretofore conveyed to the Metropolitan Traction Company of New York by Charles D. Land and Rose G., his wife, by deed dated July 1, 1894, and recor - in the Office of the Register of the City and County of New York in Block Series (Conveyances) Section 7, Liber 22, page 384, and indexed under Block Number 2015, and which premises were conveyed to the Metropolitan Street Railway Company by The Metropolitan Traction Company of New York by deed dated July 2, 1897, and recorded in said Register's Office on July 20, 1897, in Block Series (Conveyances), Section 7, Liber 47, page 241, and indexed under Block Number 2015; subject, however, to a mortgage made by Charles D. Lane and Rose G., his wife, to John D. Crimmins, and recorded in Block Series (Mortgages), Section 7, Liber 38, page 298, and also subject to the restrictions and covenants contained in a certain grant from the Mayor, Aldermen and Commonalty of the City of New York to Mary G. Pinckney, dated November 7, 1867, and recorded on November 15, 1867, in the Office of the Register of the City and County of New York in Liber 1041 of Conveyances, page 1, in so far as the same affects the said described premises; provided, however, that the property described under the heading "146th, 147th Street, Lennox Avenue and 7th Avenue property" is subject to the right, title and interest therein of the Sixth Avenue Railroad Company.

Dry Dock Street Property

All that certain lot, piece or parcel of land, with the building thereon erected, situate, lying and being in the Eleventh Ward in the City of New York, bounded and described as follows: Beginning at a point on the westerly side of Dry Dock Street at the middle of the party wall distant southerly from the point or angle formed by the intersection of the westerly line of Dry Dock Street and the southerly line of Eleventh Street, ninety-four (94) feet nine and one-half (9½) inches or thereabouts running thence westerly parallel or nearly so with Eleventh Street and part of the way through a party wall eighty-four (84) feet, thence northerly and parallel or nearly so with Dry Dock Street twenty-two (22) feet, thence easterly parallel or nearly so with Eleventh Street eighty-four (84) feet to the westerly line of Dry Dock Street, thence southerly along the westerly line of Dry Dock Street Twenty-two (22) feet to the point or place of beginning; be the said dimensions more or less. Being the same premises conveyed to The Metropolitan Traction Company of New York by Joseph Branagan, by deed dated November 23, 1892, and recorded in the office of the Register of the City and County of New York on November 23, 1892, in Block Series (Conveyances) Section 2, Liber 14, page 444, and indexed under Block Number 380, and which were conveyed by The Metropolitan Traction Company of New York to the Metropolitan Street Railway Company by indenture dated September 15, 1897, and recorded in the office of the Register of the City and County of New York on September 28, 1897, in Block Series (Conveyances) Section 2, Liber 56, page 229, and indexed under Block Number 380.

Front Street Property.

All those three certain lots, pieces or parcels of land, with the buildings and improvements erected thereon, situate, lying and being in the City of New York, and

known as Numbers 13, 15 and 17 Front Street, which, taken together, according to a survey thereof made August, 1883, are bounded and described as follows: Beginning at the northeasterly corner thereof at a point in the southerly line or side of Front Street opposite the middle of a party wall and distant thirty-two (32) feet seven (7) inches westerly from the southwesterly corner of Front and Broad Streets, and running thence southwardly parallel or nearly so with Broad Street and along the middle of said party wall, one hundred five (105) feet one (1) inch to a point opposite a fence; thence westwardly along said fence and parallel or nearly so with Front Street eighteen (18) feet nine (9) inches to an angle in said fence; thence in a northwesterly direction and along said fence to another angle therein five (5) feet; thence again westwardly parallel or nearly so with Front Street and along said fence, the brick wall of a five-story building and another fence thirty-seven (37) feet four and one-half (4½) inches to the wall of a five story brick building; thence northwardly and along said wall to an angle therein twenty (20) feet; thence again westwardly along said wall three (3) feet six (6) inches to the middle of a party wall; thence northwardly along the middle of said party wall and parallel or nearly so with Moore Street seventy-nine (79) feet ten (10) inches to the southerly side of Front Street, and thence eastwardly along said southerly side of Front Street sixty-five (65) feet one half (½) inch to the point or place of beginning; that portion which is known as No. 13 Front Street being subject to an agreement made by Mulford Martin with Elias H. Herrick, dated May 28, 1840. Being the same property which was conveyed to The Metropolitan Traction Company of New York by John D. Crimmins by deed dated September 29, 1892, and recorded in the office of the Register of the City and County of New York on November 29, 1892, in Block Series (Conveyances), Section 1, Liber 10, page 472, and indexed under Block Number 4, and which was conveyed to the Met-

ropolitan Street Railway Company by deed dated September 11, 1896, and recorded in said Register's Office on September 28, 1897, in Block Series (Conveyances), Section 1, Liber 43, page 361, and indexed under Block Number 4.

NINTH AVENUE PROPERTY.

All those forty certain lots and parts of lots or gores of land, situate, lying and being in the City of New York, in the Twenty-second Ward of said city, which, taken together as one parcel, are bounded and described as follows, viz: Beginning at a point on the easterly side of line of Ninth Avenue which is distant sixty-five (65) feet northerly from the northerly line of Fifty-third Street; running thence northerly along said easterly line of Ninth Avenue one hundred thirty-five (135) feet ten (10) inches, to the southerly line of Fifty-fourth Street; thence easterly along said southerly line of Fifty-fourth Street, five hundred twenty five (525) feet and to a point distant two hundred seventy-five (275) feet westerly from the point of intersection of the southerly line of Fifty-fourth Street with the westerly line of Eighth Avenue; thence southerly on a line at right angles with the said southerly line of Fifty-fourth Street one hundred sixty-five (165) feet eleven and three eighths (11 3/8) inches; thence in a northwesterly direction eighty-one (81) feet two (2) inches, to a point distant thirty-eight (38) feet two (2) inches, north of Fifty-third Street; thence westerly eighty-two (82) feet to a point forty-nine (49) feet north of Fifty-third Street; thence westerly one hundred twenty nine (129) feet one (1) inch to a point distant fifty-two (52) feet north of Fifty-third Street; thence westerly one hundred forty-one (141) feet to a point distant fifty-one(51) feet eight inches (8) north of Fifty-third Street; thence westerly sixty-one (61) feet five (5) inches, to a point distant fifty-six (56) feet five (5) inches, north of Fifty-third Street; thence westerly thirty-one (31) feet four (4) inches to the easterly line

of Ninth Avenue at the point or place of beginning; together with all the buildings and erections now existing thereon; being part of the premises conveyed to John D. Crimmins by The Eighth Avenue Railroad Company, a corporation created and existing under the laws of the State of New York, by deed dated July 19, 1892, and recorded in the Office of the Register of the City and County of New York on August 3, 1892, in Block Series (Conveyances) Section 4, Liber 17, page 78; and by said John D. Crimmins conveyed to The Metropolitan Traction Company of New York by deed dated September 29, 1892, and recorded in said Register's Office on September 29, 1892, in Block Series (Conveyances) Section 4, Liber 18, page 138, and indexed under Block Numbers 1044 and 1045; and by said Metropolitan Traction Company to the Metropolitan Street Railway Company by deed dated September 11, 1896, and recorded in the office of the Register of the City and County of New York, on September 28, 1897, in Block Series (Conveyances) Section 4, Liber 62, page 11, and indexed under Block Numbers 1044 and 1045 on the Land Map of the City of New York; subject to a certain mortgage dated July 19, 1892, made by John D. Crimmins to The Eighth Avenue Railroad Company, to secure the payment of the sum of Two hundred and fifty thousand dollars ($250,000) and interest, on which $50,000 has been paid.

FIFTY-THIRD STREET PROPERTY.

All that certain gore, lot, piece or parcel of land with the building thereon situate, lying and being on the northerly side of Fifty-third Street in the City of New York, in the Twenty-second Ward of said City, and bounded and described as follows: Beginning at a point on the northerly side of Fifty-third Street at a point distant four hundred thirty-four (434) feet eleven (11) inches easterly from the corner formed by the intersection of

the easterly side of Ninth Avenue with the northerly side of Fifty-third street; running thence northerly and parallel with Ninth Avenue thirty-nine (39) feet three and one half (3½) inches or thereabouts to the southerly line of lands formerly of Jacob Harsen; thence easterly along the said line of lands formerly of Jacob Harsen twenty-five (25) feet or thereabouts, thence southerly and again parallel with Ninth Avenue thirty-seven (37) feet five and one-eighth (5⅛) inches or thereabouts to the northerly side of Fifty-third Street, and thence westerly along said northerly side of Fifty-third Street twenty-five feet (25) to the point or place of beginning. Being the same premises conveyed to John D. Crimmins by Margaret F. Miller by deed dated August 3, 1892, and recorded in the office of the Register of the City and County of New York on August 3, 1892, in Block Series (Conveyances) Section 4, Liber 17, page 87, and by the said John D. Crimmins conveyed to The Metropolitan Traction Company of New York by deed dated September 29, 1892, and recorded in the Office of the Register of the City and County of New York on September 29, 1892, in Block Series (Conveyances) Section 4, Liber 18, page 135 and indexed under Block Number 1044 and by said The Metropolitan Traction Company of New York conveyed to the Metropolitan Street Railway Company by deed dated September 15, 1897, and recorded in said Register's office on September 28, 1897, in Block Series (Conveyances) Section 4, Liber 62, Page 9, and indexed under block number 1044.

Also all those certain gore lots, pieces or parcels of land, with the improvements thereon, situate, lying and being in the Twenty-second Ward of the City of New York and bounded and described as follows: Beginning at a point on the northerly side of Fifty-third Street distant two hundred and seventy-five (275) feet westerly from the corner formed by the intersection of the westerly side of Eighth Avenue, with the Northerly side of Fifty-third Street and running thence

westerly along said northerly side of Fifty-third Street sixty-five (65) feet one (1) inch to the Easterly line of a gore lot conveyed to the Metropolitan Street Railway Company by the Metropolitan Traction Company of New York by deed dated September 15, 1897; thence northerly along said easterly line of said gore lot thirty-seven (37) feet five and one-eighth (5⅛) inches or thereabouts to the southerly line of lands formerly of Jacob Harsen, deceased; thence easterly along said line of lands of Jacob Harsen, deceased, sixty-five (65) feet one (1) inch or thereabouts to a point distant two hundred seventy-five (275) feet westerly from Eighth Avenue; and thence southerly on a line parallel with Eighth Avenue thirty-four (34) feet ten and five eighths (10⅝) inches to the northerly side of Fifty-third Street to the point or place of beginning. Also, all those certain gore lots, pieces or parcels of land, with the improvements thereon, situate, lying and being in the Twenty-second Ward of the City of New York and bounded and described as follows: Beginning at a point on the northerly side of Fifty-third Street distant four hundred nine (409) feet eleven inches (11) from the corner formed by the intersection of the easterly side Ninth Avenue with the northerly side of Fifty-third Street; running thence northerly forty-two (42) feet two (2) inches or thereabouts to the southerly line of lands formerly of Jacob Harsen, deceased; thence easterly along said line of lands of Jacob Harsen, deceased, twenty-five (26) feet to the westerly line of a gore lot conveyed to the Metropolitan Street Railway Company by the Metropolitan Traction Company of New York by deed dated September 15, 1897; thence southerly along said westerly line of said gore lot and parallel with Ninth Avenue thirty-nine (39) feet and three and one-half inches (3½) or thereabouts to the northerly side of Fifty-third Street at a point distant three hundred and sixty-five (365) feet one (1) inch westerly from the corner formed by the intersection of the westerly side of Eighth Avenue with the northerly

side of Fifty-third Street, and thence westerly along said northerly side of Fifty-third Street twenty-five (25) feet to the point or place of beginning; being the premises conveyed to the Metropolitan Street Railway Company by The Metropolitan Traction Company of New York by deed dated September 15, 1897, and recorded in the office of the Register of the City and County of New York on September 28, 1897, in Block Series (Conveyances) Section 4, Liber 62, page 6, and indexed under Block number 1044.

TWENTY-THIRD STREET LEASEHOLD.

All those certain lots, pieces and parcels of land in the Sixteenth Ward of the City of New York which, taken together, are bounded and described as follows: Beginning at the intersection of the northerly side of West Twenty-third Street with the westerly side of Eleventh avenue; thence running northerly and parallel with Eleventh Avenue ninety-eight (98) feet nine (9) inches or thereabouts to the half distance line between Twenty-third Street and Twenty-fourth Street; thence westerly and along said half distance line four hundred fifty-two (552) feet seven and one-half (7½) inches or thereabouts to the easterly line of Thirteenth Avenue; thence southeasterly and parallel with Thirteenth Avenue one hundred one (101) feet four (4) inches or thereabouts to a point formed by the intersection of the easterly line of Thirteenth Avenue with the northerly line of Twenty-third Street; thence easterly and parallel with Twenty-third Street four hundred thirty (436) feet or thereabouts to the point or place of beginning.

B. REAL ESTATE SUBJECT TO THE METROPOLITAN STREET RAILWAY COMPANY'S GENERAL AND COLLATERAL TRUST MORTGAGE.

NINTY-SIXTH STREET AND FIRST AVENUE PROPERTY.

All that certain block, piece or parcel of land with the buildings and improvements thereon, situate, lying

and being in the Twelfth Ward of the City of New Xork and bounded and described as follows, viz.: Northerly by the middle line of Ninety-sixth Street; southerly by the middle line of Ninty-fifth Street; westerly by the middle line of First avenue, and easterly by the East or Harlem River. And also the land under water, and all preemptive rights in, upon and under the East or Harlem River, lying in front of the above described block; being the premises conveyed by Daniel B. Hasbrouck and Sarah Hasbrouck, his wife, to the Metropolitan Street Railway Company, by deed dated April 7, 1897, and recorded in the Office of the Register of the City and County of New York, in Block Series (Conveyances), Section 5, Liber 49, page 25, and indexed under Block Number 1575.

AVENUE C DEPOT PROPERTY.

All those two certain lots, pieces or parcels of lands, with the buildings and improvements thereon, situate in the Eleventh Ward of the City of New York, and which taken together are bounded and described as follows: Beginning on the northerly line or side of Eleventh Street, distant one hundred eighty-three (183) feet easterly from the corner formed by the intersection of the northerly side of Eleventh Street with the easterly side of Avenue C, as the same was then laid out and widened, which said widening was not noted or allowed for on the map hereinafter mentioned, and running thence northerly and parallel with Avenue C one hundred three (103) feet three (3) inches to the centre line of the block between Eleventh Street and Twelfth Street; thence easterly along said centre line of the block and parallel with Eleventh Street fifty (50) feet; thence southerly and parallel with Avenue C one hundred three (103) feet three (3) inches to the northerly side or line of Eleventh Street, and thence westerly along the same fifty (50) feet to the point or place of beginning.

All that certain lot, piece or parcel of land with the

buildings thereon erected, situate, lying and being in the Eleventh Ward in the City of New York, and bounded and described as follows: Beginning at a point on the northerly side of Tenth Street, distant two hundred thirty-three (233) feet easterly from the northeasterly corner of Tenth Street and Avenue C, and thence northerly and parallel with Avenue C eighty (80) feet to the point or place of beginning, running northerly from that point and parallel with Avenue C fourteen (14) feet nine (9) inches; thence easterly and parallel with Tenth Street twenty-five (25) feet; thence southerly and again parallel with Avenue C fourteen (14) feet nine (9) inches; thence westerly and again parallel with Tenth Street, Twenty-five (25) feet, to the point or place of beginning.

All that certain piece of land, with the buildings thereon situate, lying and being in the Eleventh Ward of the City of New York on the northerly side of Tenth Street and beginning at a point two hundred eight (208) feet distant easterly from the northeasterly corner of Tenth Street and Avenue C, and running thence easterly along the northerly side of Tenth Street twenty-five feet (25) thence northerly on a line parallel with Avenue C ninety-four (94) feet nine and one-half (9½) inches, to the centre line of the block between Tenth Street and Eleventh Street; thence westerly on a line parallel with Tenth Street twenty-five (25) feet; thence southerly on a line parallel with Avenue C ninety-four (94) feet nine and one-half (9½) inches, to Tenth Street, aforesaid, the place of beginning.

Also, six other lots, pieces and parcels of ground and premises, with the buildings thereon, situate, lying and being in the Eleventh Ward of the City of New York and bounded and described as follows: Beginning at a point on the southerly side of Eleventh Street distant one hundred eight (108) feet easterly from the southeasterly corner of Avenue C and Eleventh Street; and running thence easterly and along the southerly side of Eleventh Street seventy-five (75) feet; thence

southerly and parallel with Avenue C one hundred eighty-nine (189) feet seven (7) inches, more or less, to the northerly side of Tenth Street; thence westerly and along the northerly side of Tenth Street seventy-five (75) feet, and thence northerly and parallel with the Avenue C one hundred eighty-nine (189) feet seven (7) inches, more or less, to the place of beginning.

All those two certain lots, pieces or parcels of land, with the buildings thereon, situate, lying and being on the northerly side of Eleventh Street, in the Eleventh Ward of the City of New York, and known and distinguished on a certain map filed by Frederick De Puyster, Master in Chancery, in the office of the Register of the City and County of New York, entitled "map of two hundred and forty lots of land situate at Burnt Mill Point in the Elevent Ward of the City of New York," by the numbers eighty-five (85) and Eighty-six (86) and more fully bounded and described as follows: Beginning at a point on the northerly side of Eleventh Street in said city, distant two hundred thirty-three (233) feet easterly from the northeasterly corner of Avenue C and Eleventh Street, running thence northerly and parallel with Avenue C one hundred three (103) feet three (3) inches; thence easterly and parallel with Eleventh Street fifty (50) feet; thence southerly and parallel with Avenue C one hundred three (103) feet three (3) inches to Eleventh Street, and thence westwardly along Eleventh Street fifty (50) feet to the place of beginning. Also, all those four certain lots, pieces or parcels of land situate, lying and being in the Eleventh Ward of the City of New York, bounded and described as follows: Beginning at a point on the southerly side of Eleventh Street distant one hundred eighty-three (183) feet easterly from the easterly line of Avenue C, running thence southerly and parallel with Avenue C ninety-four (94) feet nine (9) inches to the centre line of the block, running thence easterly along said centre line one hundred (100) feet; thence northerly and parallel with Avenue C ninety-four (94) feet nine (9) inches to the southerly line or

side of Eleventh Street; thence westerly along the southerly line of Eleventh Street one hundred (100) feet to the place of beginning;

No. 413 East Tenth Street Property.

All that certain lot, piece or parcel of ground, with the building thereon erected, which on a certain map filed by Frederick De Puyster, Master in Chancery (with his certificate endorsed thereon, dated February 1, 1837) in the office of the Register of the City and County of New York, entitled "Map of 240 lots of land situated at Burnt Mill Point in the Eleventh Ward of the City of New York," consisting of one lot of land thereon designated by the number "144" (one hundred and forty-four), is bounded as follows, viz.: Commencing at a point on the northerly side of Tenth Street, distant one hundred and ninety three (193) feet southeasterly from the northeasterly corner of Avenue C and Tenth Street; running thence northeasterly along lot 145 on said map ninety-four (94) feet nine (9) inches to the centre of the block; thence southeasterly along the centre of the block twenty-five (25) feet to lot 143 on said map; thence southwesterly along said lot 143 ninety-four (94) feet nine (9) inches to Tenth Street, and thence northwesterly along Tenth Street twenty-five (25) feet to the point of beginning.

Lenox Avenue and One Hundred and Sixteenth Street Property.

All those certain lots, pieces or parcels of land situate, lying and being in the Twelfth Ward of the City of New York, and which taken together are bounded and described as follows: Commencing at the corner formed by the intersection of the Northerly line of One hundred and sixteenth Street with the westerly side of Lenox Avenue (formerly Sixth Avenue), running thence northerly along said westerly line of Lenox Avenue two hundred one (201) feet ten (10) inches to the

southerly line of One hundred and seventeenth Street; thence westerly along said southerly line of One hundred and seventeenth Street two hundred (200) feet; thence southerly and parallel with Lenox Avenue Two hundred one (201) feet ten (10) inches to the northerly line of One hundred and sixteenth Street; thence easterly along said northerly line of One hundred and sixteenth Street two hundred (200) feet to the point or place of beginning. Being the same premises conveyed by the Metropolitan Traction Company of New York to the Lexington Avenue and Pavonia Ferry Railroad Company by deed dated January 15, 1894, and recorded in the office of the Register of the City and County of New York in Block Series (Conveyances) Section 7, Liber 20, at page 456 and indexed under Block Number 1901, subject, however, to the existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

LEXINGTON AVENUE AND NINETY-NINTH STREET PROPERTY.

All that certain plot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of New York, and bounded and described as follows: Beginning at the northeasterly corner of Fourth Avenue and Ninety-ninth Street, running thence northwardly along the easterly line of Fourth Avenue two hundred one (201) feet ten (10) inches to the southerly line of One hundredth Street; thence easterly along the southerly line of One hundredth Street four hundred five (405) feet; thence southwardly and parallel with Fourth Avenue two hundred one (201) feet ten (10) inches to the northerly line of Ninety-ninth Street, and thence westwardly along the northerly line of Ninety-ninth Street four hundred five (405) feet to the point or place of beginning. Being the same premises conveyed by the Metropolitan Traction Company of New York to the Lexington Avenue and Pavonia Ferry Railroad Company by deed dated January 15th, 1894, and recorded in the office of the Register of the City

and County of New York, in Block Series (Conveyances), Section 6, Liber 22, page 157, and indexed under Block Number 1627. Subject, however, to the existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

LEXINGTON BUILDING.

All those certain lots, pieces or parcels of land with the building or buildings thereon erected, situate, lying and being in the Twelfth Ward of the City of New York, bounded and described as follows: Commencing on the northerly side of Twenty-fifth Street, at a point distant one hundred seven (107) feet six (6) inches westerly from the corner formed by the intersection of the northerly line of Twenty-fifth Street with the westerly line of Third Avenue, and running thence westerly along the northerly line of Twenty-fifth Street, one hundred eighty-seven (187) feet six (6) inches or thereabouts, and thence running northerly and parallel, or nearly so, with Third Avenue one hundred ninety-seven (197) feet five (5) inches to the southerly side of Twenty-sixth Street and thence running easterly along the southerly side of Twenty-sixth Street one hundred eighty-six (186) feet, or thereabouts, and thence running southerly and parallel with Third Avenue ninety-eight (98) feet nine (9)i nches to the centre line of the block between Twenty-fifth and Twenty-sixth Streets, and thence running easterly along the said centre line of the block one (1) foot six (6) inches, thence running southerly and parallel with Third Avenue, ninety-eight (98) feet nine (9) inches to the northerly line of Twenty-fifth Street, being the same premises which were heretofore conveyed by the following conveyances, viz:

Deed of Ruth A. Brown to The Metropolitan Traction Company of New York, dated May 31, 1894, and recorded in the Office of the Register of the City and County of New York, on June 4, 1894, in Block Series (Conveyances) Section 3, Liber 30, page 128

and indexed under Block Number 881. Deeds of John D. Crimmins to the Metropolitan Traction Company of New York, dated respectively July 13, 1893, February 21, 1894, and August 31, 1894, and respectively recorded in said Register's Office on July 24, 1893, March 5, 1894, and October 18, 1894, in Block Series (Conveyances) Section 3, Liber 21, page 408, Liber 26, page 113 and Liber 31, page 57 and all indexed under Block Number 881. Deed of Alonzo C. Munson to The Metropolitan Traction Company of New York, dated June 15, 1894, and recorded in said Register's Office on June 18, 1894, in Block Series (Conveyances) Section 3, Liber 29, page 176 and indexed under Block Number 881.

Subject, however, to an existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

Belt Line Repair Shops.

All that certain lot, piece or parcel of land, together with the buildings and improvements thereon lying and being in the Twenty-second Ward of the City of New York, situate on the north side of West Fifty-third Street, between Tenth and Eleventh Avenues, and known as lot number 768 on a certain map of John Hopper's Estate, filed in the Register's Office of the City of New York on December 31, 1864, as Map No. 660 and being bounded and described as follows: Beginning at a point on the northerly side of Fifty-third Street distant four hundred seventy-five (475) feet westwardly from the westerly side of Tenth Avenue, and running thence westwardly along said northerly side of Fifty-third Street twenty-five (25) feet; thence northerly on a line parallel with Tenth Avenue forty-eight (48) feet three and three-quarters (3¾) inches, thence southwesterly twenty-five (25) feet or thereabouts to a point in a line distant forty-four (44) feet ten (10) inches northerly from the northerly side of Fifty-third Street, and

thence southerly on a line parallel with Tenth Avenue forty-four (44) feet ten (10) inches to the northerly side of Fifty-third Street to the point or place of beginning. Being the same premises conveyed to The Metropolitan Traction Company of New York by Bertha Volkening by deed dated March 30, 1893, and recorded in the office of the Register of the City and County of New York on March 30, 1893, in Block Series (Conveyances) Section 4, Liber 21, page 283.

And also all those certain lots, pieces or parcels of land, together with the buildings and improvements erected thereon, situate, lying and being in the Twenty-second Ward of the City of New York and bounded and described as follows: Beginning at a point three hundred (300) feet easterly from the southeasterly corner of Eleventh Avenue and Fifty-fourth Street; thence easterly along the line of Fifty-fourth Street twenty-five (25) feet; thence southerly parallel with Eleventh Avenue, through the centre of the block to the line of property now or formerly owned by Garrit H. Striker one hundred fifty-six (156) feet; thence northwesterly along the line of said property twenty-five (25) feet three and one quarter (3¼) inches; thence northerly parallel to Eleventh Avenue one hundred fifty-two (152) feet six and one quarter (6¼) inches, to the point or place of beginning, be the said several dimensions more or less. Being the same premises conveyed by Andrew Doerrschuck and Annie, his wife, to The Metropolitan Traction Company, of New York, by deed dated March 6, 1893, and recorded in the Office of the Register of the City and County of New York on March 8, 1893, in Block Series (Conveyances) Section 4, Liber 20, page 296 and indexed under Block Number 1082.

Chambers Street Leasehold.

All the leasehold rights of the Metropolitan Street Railway Company in and to all that certain lot, piece or parcel of land situate, lying and being in the

Seventh Ward of the City of New York, bounded and described as follows : Beginning at the corner formed by the intersection of the southerly line of Cherry Street with the westerly line of East Street, and running thence southerly along the westerly line of East street one hundred (100) feet three (3) inches ; thence westerly on a line parallel or nearly so with the southerly line of Cherry Street two hundred forty-five (245) feet six (6) inches ; thence northerly on a line parallel or nearly so with the westerly line of East Street twenty-six (26) feet one (1) inch ; thence easterly parallel or nearly so with said line of Cherry Street nineteen (19) feet eleven (11) inches ; thence northerly parallel or nearly so with the said line of East Street seventy-five (75) feet the said line of Cherry Street ; thence easterly along said last mentioned line two hundred twenty-five (225) feet to the place of beginning, and known by the Street Number 505 Cherry Street. Also all the leasehold rights of the Metropolitan Street Railway Company in and to all that certain lot, piece or parcel of land situate, lying and being on Cherry Street in said City immediately adjoining the above described premises on the westerly side thereof, which said lot is about twenty (20) feet in width in front and rear and seventy-five (75) feet in depth on each side.

TWENTY-FOURTH STREET LEASEHOLD.

All the leasehold rights of the Metropolitan Street Railway Company in and to all those ten certain lots of ground, situate, lying and being in the Sixteenth Ward of the City of New York, distinguished on a map of certain lands of Clement C. Moore, situate at Greenwich, in the City of New York, recorded in the office of the Register of the City and County of New York, in Liber 634 of Conveyances, page 411, by the numbers 905 (nine hundred and five to (nine hundred and eight (908 and 936 (nine hundred and thirty-six) to 941 (nine hundred and forty-one) all inclusive ; and

bounded together as follows, viz: Southeastwardly in front by Eleventh Avenue; southwestwardly by the half distance line between Twenty-third Street and Twenty-fourth Street, northwestwardly by lot numbered on the said map 935 (nine hundred and thirty-five) and northeastwardly by the said Twenty-fourth Street. Containing together in width along the said Eleventh Avenue and on the northwestwardly side thereof, ninety-eight (98) feet eight (8) inches, and on the northeastwardly and southwestwardly sides thereof, two hundred twenty-five (225) feet be the said several measurements more or less.

III.

STREET SURFACE RAILROADS AND RAILROAD ROUTES IN THE COUNTY OF NEW YORK, CITY OF NEW YORK, AND STATE OF NEW YORK, OPERATED BY THE METROPOLITAN STREET RAILWAY COMPANY AS LESSEE, UNDER THE LEASES HEREINAFTER MENTIONED:

LINES LEASED TO AND OPERATED BY METROPOLITAN STREET RAILWAY COMPANY.

Lease of the Bleecker Street and Fulton Ferry Railroad Company to the Twenty-third Street Railway Company.

Dated January 10, 1876, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of ninety-nine years, said lease including the railroad operated along the streets described as follows: Commencing at Twenty-third Street and Eleventh Avenue, running along Eleventh Avenue to Fourteenth Street to Fourth Avenue; and also commencing at the intersection of Fourteenth Street and Hudson Street and thence running southerly and easterly through the city upon various streets, to Fulton Ferry.

Lease of the Broadway and Seventh Avenue Railroad Company to The Hudson, West Street and Pavonia Frary Railroad Company.

Dated May 13, 1890, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor and any extensions of said charter, said lease including the railroad operated along the streets, described as follows: Commencing at Fifty-ninth Street and Seventh Avenue; running thence through and along Seventh Avenue to Broadway; thence through and along Broadway to Fifteenth Street; and thence through and along University Place and certain other streets to Barclay Street; and thence through Barclay Street and Park Place to Broadway; and through Seventh Avenue, from Broadway to Greenwich Avenue to Macdougal Street to West Fourth Street, and through Thompson and Sullivan Streets to West Broadway; and also from Broadway and Twenty-third Street, through Twenty-third Street to Lexington Avenue, thence through Lexington Avenue to Twenty-seventh Street.

Lease of the Central Park, North and East River Railroad Company to The Metropolitan Cross-Town Railway Company, and the Houston, West Street and Pavonia Ferry Railroad Company.

Dated October 14, 1892, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor and any extensions of said charter, said lease including the railroad operated along the streets described as follows: From Tenth Avenue and Fifty-ninth Street through Tenth Avenue, West Street and other streets to the South Ferry; and also from Tenth Avenue at Fifty-ninth Street along Fifty-ninth Street to First Avenue; and thence through various other streets and avenues to the said South Ferry.

Lease of the Eighth Avenue Railroad Company to Metropolitan Street Railway Company.

Dated November 23, 1895, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of ninety-nine years from January 1, 1896, said lease including the railroad operated along the streets described as follows: Commencing at or near the intersection of Vesey Street and Broadway, thence running through Vesey Street to College Place, and through College Place, Church Street and Chambers Street to West Broadway and through West Broadway to Canal Street, and through Canal Street to Hudson Street, and through Hudson Street to Eighth Avenue, and through and along Eighth Avenue to the point where the street or road commonly called the McCombs Dam Road intersects or meets Eighth Avenue; thence through and along the said McCombs Dam Road to or near the westerly end of the bride known as McCombs Dam Bridge, with an extension or branch running from the junction of West Broadway and Canal Street to Broadway, and also the extension of its railroad from the junction of McCombs Dam Road along Eighth Avenue to the Harlem River.

Lease of The Forty-second Street and Grand Street Ferry Railroad Company to the Metropolitan Crosstown Railway Company and The Houston, West Street and Pavonia Ferry Railroad Company.

Dated April 6, 1893, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor and any extensions of the charter, said lease including the railroad operated along the streets described as follows: Commencing at the ferry at the western extremity of Forty-second Street; thence through and along Forty-second Street, with a double track to Tenth Avenue; through and along Tenth Avenue to Thirty-fourth

Street; through and along Thirty-fourth Street, with a double track, to Broadway; through and along Broadway to Twenty-third Street; through and along Twenty-third Street to Fourth Avenue; through and along Fourth Avenue and Union Square, with a double track to Fourteenth Street; through and along Fourteenth Street, with a double track, to Avenue A; through and along Avenue A, with a double track, to Second Street, and thence along Avenue A, with a single track, to First Street; through and along First Street and Houston Street, with a single track, to Cannon Street; through and along Cannon Street, with a single track, to Grand Street; through and along Grand Street, with a single track, to Goerick Street, and thence through and along Grand Street, with a double track, to Grand Street Ferry, at the foot of Grand Street, East River; and also from the intersection of Second Street and Avenue A through and along Second and Houston Streets, with a single track, to Goerck Street; thence through and along Goerck Street, with a single track, to Grand Street to Grand Street Ferry.

Lease of the New York and Harlem Railroad Company (city line) to the Metropolitan Street Railway Company.

Dated June 11, 1896, by which all the railroads and roailroad routes of the lessor in the City of New York are leased to the lessee for the term of nine hundred and ninety-nine years from July 1, 1896; said lease including the railroad operated along the streets described as follows:

Commencing at intersection of Park Row, Ann Street and Broadway, to Centre Street to Grand Street and Broome Street to Bowery, to Fourth Avenue, to Forty-second Street, to Madison Avenue, to One hundred and thirty-eighth Street also on Eighty-sixth Street from Madison Avenue to First Avenue on First Avenue to Ninety-third Street to Astoria Ferry; also extension on Thirty-second and Thirty-third Streets,

Lexington Avenue and Thirty-fourth Street, from Fourth Avenue to Thirty-fourth Street Ferry.

Lease of The Ninth Avenue Railroad Company to The Houston, West Street and Pavonia Ferry Railroad Company.

Dated March 12, 1892, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of ninety-nine years, said lease including the railroad operated along the streets described as follows: Commencing at the intersection of Broadway and Fulton Street, running through Fulton Street to Greenwich Street; thence through and along Greenwich Street to Ninth Avenue; thence through and along Ninth Avenue and Columbus Avenue to the Grand Boulevard; thence through and along the said Boulevard to Amsterdam Avenue (formerly Tenth Avenue), and thence along Amsterdam Avenue to Manhattan Street, returning through Amsterdam Avenue, the Boulevard, Columbus Avenue, Ninth Avenue, Gansevoort Street and Washington Street to Fulton Street; thence through Fulton Street to Broadway to the place of beginning; also on Fifty-third Street from Seventh Avenue to Ninth Avenue.

Lease of the Second Avenue Railroad Company to Metropolitan Street Railway Company.

Dated January 28, 1896, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor and any extensions of said charter, said lease including the railroad operated along the streets described as follows: Upon First Avenue and Second Avenue, through various streets and avenues in the City of New York from the Harlem River to Peck Slip, with extensions and connections from Eighth Avenue through the transverse road in Central Park, along Eighty-fifth Street, connecting with Madison Avenue. Also an extension from Bowery

through Worth Street to Broadway. Also an extension from Second Avenue and Tenth Street, through Tenth Street and Astor Place to Broadway.

Lease of Sixth Avenue Railroad Company to The Houston, West Street and Pavonia Ferry Railroad Company.

Dated February 1, 1892, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of eight hundred years, said lease including the railroads operated along the streets described as follows: Commencing at the intersection of Fifty-ninth Street and Sixth Avenue, running thence southerly along Sixth Avenue to Carmine Street; thence through Carmine Street to Varick Street; thence through Varick Street to Canal Street; thence through Canal Street to West Broadway; and also from the intersection of West Broadway and Canal Street, thence through and along West Broadway to Vesey Street; thence through Vesey Street to Broadway; and also through Church Street to Chambers Street, and through Chambers Street to Broadway; and also upon and along Lenox Avenue from One hundred and Tenth Street to the Harlem River, also on West Third Street from Carmine to Sullivan Streets. Also on Fifty-third Street from Sixth Avenue to Seventh Avenue.

Lease of the Twenty-Third Street Railway Company to The Houston, West Street and Pavonia Ferry Railroad Company.

Dated April 25, 1893, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor, and any extension of said charter, said lease including the railroad operated along the streets described as follows: Upon Twenty-third Street from the North River to the East River, and upon Second Avenue from its intersection with Twenty-third Street to Twenty-ninth Street, and thence

through Twenty-ninth Street, and also through Twenty-eighth Street to First Avenue, and thence through First Avenue to Thirty-fourth Street.

Lease of the Third Avenue Railroad Company to Metropolitan Street Railway Company.

Dated April 13, 1900, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of nine hundred and ninety-nine years, said lease including the railroad operated along the streets described as follows: Beginning at the intersection of Park Row and Broadway; thence extending along Park Row, the Bowery, Third Avenue to the Harlem River; also extending from the North River at the foot of One hundred and thirtieth Street, thence through One hundred and thirtieth Street, Manhattan Street and One hundred and twenty-fifth Street to the East River; also extending from One hundred and twenty-fifth Street through Amsterdam Avenue to the terminus of said Avenue; and also on One Hundred and thirtieth Street from Third Avenue to a point at or near Lexington Avenue.

TOGETHER WITH ALL AND SINGULAR the improvements on said properties, and all and singular, the railroads, lands, buildings, structures, fixtures, privileges, franchises, rights of way, trackage rights, contracts, consents, leaseholds, easements and other rights and interests then owned by the Metropolitan Street Railway Company; also all and singular the tracks, side tracks or sidings, switches, rails, bridges, fences, buildings, depots, station-houses, power-houses, car-houses, machine shops, repair shops and other shops, and all other buildings, improvements, erections and structures, and all dynamos, belting, engines, boilers, regulators, meters, poles, trolleys, conduits, feeders, cables, wires, switchboards, lamps and machinery for producing, generating and distributing electricity or power; and also all and singular the rolling stock, equipment,

motors, engines, tenders, carriages, cars, trucks, horses, harness, tools, implements, furniture, fixtures, machinery, materials, coal, wood, oil, fuel and other supplies and also all maps, drawings, profiles, licenses, records, deeds, contracts and agreements, patents and patented inventions and processes then owned by the Metropolitan Street Railway Company, all of which personal property was thereby declared to be fixtures and appurtenances of said railroads; and also all then present or future improvements and additions made or to be made upon and to any or all of said railroads or property, real and personal, and any and all equipment therefor and renewals or replacements of the same or of any part thereof or of the appurtenances; and also all and every other railroad, which the Metropolitan Street Railway Company should thereafter acquire or construct by means of the proceeds of any of the bonds thereby secured, and all power-houses, real estate equipment and other property, real or personal, appurtenant thereto.

And all and singular the tolls, fares, rents, issues, earnings, income, profits and other benefits and advantages of, or in any wise growing out of, all or any of the said several railroads, franchises and property, and all and singular the tenements, hereditaments and appurtenances to any of the said railroads or property belonging or in any wise appertaining, and the reversion or reversions, remainder or remainders thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well at law as in equity, of the Metropolitan Street Railway Company, in and to the same and every part and parcel thereof with the appurtenances.

IV.

AND ALSO ALL THE RIGHT, TITLE AND INTEREST of the Metropolitan Street Railway Company in and to the following shares of stock which were then pledged

and deposited with the Guaranty Trust Company of New York under the mortgage dated February 1, 1897, from the Metropolitan Street Railway Company to said Guaranty Trust Company of New York, as Trustee, securing the General Mortgage and Collateral Trust Five Per Cent. Gold Bonds of the Metropolitan Street Railway Company, viz:

1. Fourteen thousand (14,000) shares of the capital stock of The Broadway and Seventh Avenue Railroad Company of the par value of one hundred dollars ($100) each.

2. Four thousand (4,000) shares of the capital stock of the Forty-second Street and Grand Street Ferry Railroad Company of the par value of one hundred dollars ($100) each.

3. Three thousand (3,000) shares of the capital stock of the Central Park, North and East River Railroad Company of the par value of one hundred dollars (100) each.

4. Nine thousand, nine hundred (9,900) shares of the capital stock of the Thirty-fourth Street Cross-Town Railway Company, of the par value of one hundred dollars ($100) each.

To have and to hold the said described premises and property unto your orator, its successors in the trust, its or their assigns, in trust for the equal and proportionate benefit and security of all holders of the bonds and coupons issued and to be issued and secured by said mortgage and for the enforcement of the payment of the said bond and interest when payable according to the tenor, purport and effect of such bonds and coupons and to secure the performance and observance of and compliance with the covenants and conditions of the said indenture, without preference, priority or distinction as to lien or otherwise of one bond over any other bond by reason of priority in the issue, sale or negotiation thereof or by reason of the purpose of its issue as in said mortgage or deed of trust more fully set forth.

All the property so conveyed and mortgaged to your orator as aforesaid is situated within the Southern District of New York. Said mortgage was duly recorded in the office of the Register of the County of New York in which the property thereby mortgaged was situated.

Your orator duly accepted the trusts therein created and it was and now is fully authorized and empowered to take and hold in trust the property conveyed to it therein and to execute the trusts reposed in it under and by virtue of the provisions thereof.

A copy of this mortgage marked Exhibit A is filed herewith and your orator prays leave to refer to the same as if it were fully set forth in this bill of complaint.

V. After the execution and delivery of said mortgage, the Metropolitan Company duly made and executed bonds of the issue described in said mortgage of the aggregate par value of sixteen million six hundred and four thousand dollars ($16,604,000.) all of which bonds were duly certified by your orator in all respects as provided in said mortgage, and all of said bonds, as your orator is informed and believes, were duly issued by the Metropolitan Company for a valuable consideration and in accordance with the provisions of said mortgage; and said bonds are now outstanding in the hands of divers persons and corporations who are now the owners and holders thereof for value and your orator is advised and avers that said bonds so issued as aforesaid are now in all respects valid outstanding obligations of the defendant Metropolitan Company and are entitled to the benefit and security of the said mortgage.

VI. Certain of the bonds so issued as aforesaid were certified and delivered by your orator and issued in accordance with the provisions of subdivision (2) of Article Second of said mortgage against the deposit with your orator, as security for the bonds

issued and to be issued under said mortgage, of the following securities, viz.:

First Mortgage Five Per Cent. Bonds of The Broadway and Seventh Avenue Railroad Company due June 1, 1904..	$1,497,000.00
Consolidated Mortgage Seven Per Cent. Bonds of the Central Park North and East River Railroad Company due December 1, 1902	1,200,000.00
Second Mortgage Five Per Cent. Bonds of The Broadway Surface Railroad Company due July 1, 1905.....	1,000,000.00
Five Per Cent. Bonds of The Metropolitan Crosstown Railway Company due May 1, 1901.....	300,000.00
First Mortgage Six Per Cent. Extended Bonds of the Twenty-third Street Railway Company due January 1, 1909	250,000.00
First Mortgage Six Per Cent. Extended Bonds of the Forty-second Street and Grand Street Ferry Railroad Company due January 1, 1909	$236,000.00
Five Per Cent. Debenture Bonds of the Twenty-third Street Railway Company due January 1, 1906	150,000.00
Bond of John D. Crimmins due August 1, 1897, secured by mortgage to The Eighth Avenue Railroad Company....	200,000.00
Bond of John D. Crimmins due February 20, 1894, secured by mortgage to The Mutual Life Insurance Company of New York	150,000.00

Said securities so deposited with your orator ever since have been and now are held in trust by it subject to the trusts declared in said mortgage as additional security for the payment of the bonds issued thereunder.

VII. Of the property so conveyed to your orator as trustee by the said mortgage dated March 21, 1902, your orator in accordance with the provisions of said mortgage released from the lien of said mortgage, as it was authorized to do under the provisions thereof, a portion of the property hereinbefore specifically described as "146th Street, 147th Street, Lenox Avenue and 7th Avenue property," and included among the property enumerated in Paragraph A of Subdivision II of the description of the property conveyed to your orator as hereinbefore set forth as "Real estate not subject to the Metropolitan Street Railway Company's General and Collateral Trust Mortgage;" the property so released by your orator being described as follows:

> All that lot of land situated in the Borough of Manhattan, in the City, County and State of New York, described as follows: Commencing at the intersection of the easterly line of Seventh Avenue and the northerly line of One hundred and forty-sixth Street, and running thence northerly and along said easterly line of Seventh Avenue one hundred and ninety-nine feet ten inches; thence easterly and along the southerly line of One hundred and forty-seventh Street one hundred and one feet, more or less, to the westerly line of a building owned by the vendor, and situate about one hundred and one feet east of the easterly line of Seventh Avenue, and thence southerly and along the westerly side of said building and parallel with the easterly line of Seventh Avenue one hundred and ninety-nine feet ten inches, and to the northerly line of said One hundred and forty-sixth Street, and thence westerly and along said northerly line of One hundred and forty-sixth Street to the place of commencement one hundred and one feet, more or less; together with the tenements, hereditaments and appurtenances thereunto belonging.

And your orator, in accordance with the provisions of said mortgage, further released from the lien of the said mortgage, as it was authorized to do under the provisions thereof, the property hereinbefore specifically described as "Lenox Avenue and 116th Street property" and included among the property enumerated in Paragraph B of Subdivision II of the description of the property conveyed to your orator as hereinbefore set forth as "Real estate subject to the Metropolitan Street Railway Company's General and Collateral Trust Mortgage;" said property so released being described as follows:

"All those certain lots, pieces or parcels of land situate, lying and being in the Twelfth Ward of the City of New York, and which taken together are bounded and described as follows: Commencing at the corner formed by the intersection of the northerly line of One hundred and sixteenth Street with the westerly side of Lenox Avenue (formerly Sixth Avenue), running thence northerly along said westerly line of Lenox Avenue two hundred one (201) feet ten (10) inches to the southerly line of One hundred and seventeenth street; thence westerly along said southerly line of One hundred and Seventeenth Street two hundred (200) feet; thence southerly and parallel with Lenox Avenue two hundred one (201) feet ten (10) inches to the northerly line of One hundred and sixteenth Street; thence easterly along said northerly line of One hundred and sixteenth Street two hundred (200) feet to the point or place of beginning. Being the same premises conveyed by The Metropolitan Traction Company of New York to the Lexington Avenue and Pavonia Ferry Railroad Company by deed dated January 15, 1894, and recorded in the Office of the Register of the City and County of New York in Block Series (Conveyances) Section 7, Liber 20, at page 456 and indexed under Block Number 1901.

VIII. Your orator further shows that, as it is informed and believes, simultaneously with or immediately prior to the execution and delivery of the said mortgage, Exhibit A filed herewith, the Metropolitan Company entered into a certain Indenture of Lease dated February 14, 1902, with the defendant the New York Company, under its then corporate name of Interurban Street Railway Company, and by said lease the Metropolitan Company did grant, lease and demise to the defendant New York Company under its said corporate name of Interurban Street Railway Company for the full term of Nine hundred and ninety-nine years from February 24, 1902, all its railroads and railroad routes and all its real estate and the buildings and improvements thereon, and all its leasehold interests and leased lines, including all the street surface railroads and real estate owned by it, and all the street surface railroads and railroad routes operated by it as lessee which are described in the said mortgage or deed of trust to your orator, Exhibit A and which were conveyed to your orator subject to the trusts thereof.

Said lease provided among other things that subject to the provisions therein contained and for the purposes therein specified, the Metropolitan Company, the Lessor, might with the consent of the New York Company, the Lessee, issue its bonds secured by mortgage upon its property and your orator is informed and believes that all the bonds issued by the Metropolitan Company under the aforesaid mortgage Exhibit A were issued in accordance with the provisions contained in said lease and for the purposes therein specified and with the consent of the Lessee, the New York Company.

A copy of said lease is filed herewith marked "Exhibit B" and your orator prays leave to refer to the same as if it were fully set forth in this bill of complaint.

Shortly after the execution of said lease, as your orator is informed and believes, the New York Company entered into possession of the said demised railroads and property and has operated the same and has

collected the rents and profits thereof until the appointment of its receivers as hereinafter mentioned.

IX. On or about the 24th day of September, 1907, The Pennsylvania Steel Company and The Degnon Contracting Company filed their bill in this Court against the defendant the New York Company alleging facts, as your orator is advised, constituting insolvency of the New York Company and praying for the appointment of receivers of its property. Thereafter the New York Company filed its answer to said bill admitting the allegations thereof and thereupon and on or about September 24, 1907, by order of this Court, the above named defendants Adrian H. Joline and Douglas Robinson were appointed receivers of said New York Company, and of all its property, wherever situated, and they were thereby authorized, empowered and instructed among other things, to enter upon and take possession of all such property, and to manage, operate and control the same.

Thereafter, the said Adrian H. Joline and Douglas Robinson, appointed receivers as aforesaid, duly qualified as such receivers and as such receivers entered upon and took possession of the property of said defendant New York Company, including the property which is described in the said mortgage dated March 21, 1902 and was conveyed to your orator subject to the trusts thereof, and they have since used and operated the same and are now, as such receivers, in possession of said property.

Your orator files herewith a copy of said bill and answer and order marked Exhibit C and prays leave to refer thereto for a precise statement of the contents thereof.

X. Your orator further alleges, that thereafter the Metropolitan Company presented its duly verified petition to this Court wherein it alleged facts, as your orator is advised, constituting insolvency of the Metropolitan Company, and prayed that it might become a party defendant to said suit of The Pennsylvania

Steel Company and The Degnon Contracting Company against the New York Company and that the receivership under the bill of complaint in the said cause be extended so as to expressly embrace the interests of the Metropolitan Company in said property.

Thereafter and on October 1, 1907, by an order of this Court, the Metropolitan Company was made a party defendant in said cause and the receivership in said cause was extended to the properties of the Metropolitan Company as prayed in said petition and the said Adrian H. Joline and Douglas Robinson, theretofore appointed receivers in said cause, were appointed receivers of the properties of the Metropolitan Company.

Thereafter and on or about October 1, 1907, as your orator is informed and believes, the said Adrian H. Joline and Douglas Robinson duly qualified as such receivers and as receivers as aforesaid they are now in possession of all the railroads, properties and franchises of the Metropolitan Company described in said mortgage dated March 21, 1902.

Your orator files herewith a copy of said petition and of said order of this Court marked Exhibit D and prays leave to refer thereto for a precise statement of the contents thereof.

XI. Thereafter and on or about October 9th, 1907, your orator filed its bill in this Court (leave having been granted to your orator so to do) against the Metropolitan Company, the New York Company, said Adrian H. Joline and Douglas Robinson as Receivers of the New York Company, said Adrian H. Joline and Douglas Robinson as Receivers of the Metropolitan Company, The Pennsylvania Steel Company and The Degnon Contracting Company alleging that unless the income and profits of the mortgaged premises were applied in accordance with the provisions of said mortgage the mortgaged premises would be wasted and the mortgage security become greatly impaired, and praying that a receiver

of the mortgaged property be appointed and the income and profits thereof be applied in accordance with the provisions of said mortgage.

Thereafter and on or about October 7th, 1907, said Adrian H. Joline and Douglas Robinson were by an order of this Court appointed under the said bill of complaint in said cause receivers of all the railroads, properties and premises mortgaged and pledged under the said mortgage dated March 21, 1902, and of all the tolls, earnings, income, rents, issues and profits of said railroad, property and premises, and thereafter duly qualified as such receivers.

Your orator files herewith a copy of said bill of complaint marked E and of said order marked F and prays leave to refer thereto for a precise statement of the contents thereof.

XII. Further complaining, your orator shows that the property granted and conveyed to your orator under the said mortgage dated March 21, 1902, Exhibit A, was so granted and conveyed to secure the performance and observance of all the covenants and conditions contained in said mortgage, and that in and by said mortgage Exhibit A the Metropolitan Company did agree and covenant, among other things, that it would from time to time punctually observe and perform all of the obligations and pay and discharge all amounts payable under or by virtue of any lease thereby mortgaged so that the interest of the Metropolitan Company in any such leasehold estate might be at all times preserved unimpaired as security for the bonds issued under said mortgage.

XIII. Your orator alleges that among the leasehold estates mortgaged to your orator under said mortgage, Exhibit A, is the leasehold estate demised to the Metropolitan Company, under a certain Indenture of Lease made on or about April 13, 1900, between The Third Avenue Railroad Company (hereinafter in this bill of complaint called the Third Avenue Company) and the

defendant Metropolitan Company, which lease was subsequently by an Agreement made on or about May 13, 1900, between the said parties, in certain respects modified and corrected.

A copy of said Lease marked Exhibit G and of said Agreement marked Exhibit H is filed herewith and your orator prays leave to refer to the same as if they were fully set forth in this bill of complaint.

XIV. In and by said lease, Exhibit G, the lessee, the defendant Metropolitan Company did agree among other things to pay to the lessor the Third Avenue Company a certain annual rental and as a part of such annual rental did agree from and after the expiration of six years from the date of said lease, to wit from and after the 13th day of April, 1906, for a period of four years thereafter, to pay to the lessor, the Third Avenue Company, quarter yearly, a dividend upon the outstanding capital stock of the Third Avenue Company at the rate of six (6) per centum per annum.

XV. Your orator is advised that in accordance with the provisions of said lease there became due and payable on October 13th, 1907, to the Third Avenue Company an instalment of rent for the quarter ending on that day amounting to a dividend of one and one-half per centum on the said outstanding capital stock of the Third Avenue Company.

Your orator is informed and believes that the defendant Metropolitan Company has not paid or caused to be paid the said instalment of rent payable as aforesaid, but has wholly failed and neglected so to do and the said Metropolitan Company has therein wholly made default and the said instalment of rent remains and is now wholly due and unpaid and in default; that the entire property of the Metropolitan Company is in the hands of said Joline and Robinson, receivers as aforesaid, and that said Joline and Robinson, both as Receivers of the New York Company and as Receivers of the Metropolitan Company, acting in accordance with

the directions of this Court in respect thereto have failed to pay said instalment of rent, and have made default in respect thereto.

Your orator is advised and so charges that such default in the payment of the aforesaid rent due and payable under said Lease, Exhibit G, is and constitutes a default by the Metropolitan Company in the due observance and performance by it of the covenants and conditions required in said mortgage, Exhibit A, to be kept and performed by it, and that the Metropolitan Company ever since has been and now is in default in respect thereto.

XVI. Further complaining, your orator alleges on information and belief, that the various lines of railway embraced in said lease of the Metropolitan Company to the New York Company, Exhibit B, as well the lines owned by the Metropolitan Company as the lines leased to it, are subject to funded indebtedness secured by mortgage which is now outstanding and that failure to meet the interest on such underlying funded indebtedness as such interest matures, will operate also as a default under the mortgage securing the indebtedness the interest on which shall so become in default and will render said mortgage enforceable: and that the total of such funded indebtedness now outstanding secured by mortgages (exclusive of the bonds issued and secured under the mortgage to your orator dated March 21, 1902) amounts to upwards of eighty-three million dollars ($83,000,000) and that the annual interest charges thereunder amount to upwards of Three million seven hundred and fifty thousand dollars ($3,750,000).

Your orator charges, that by said lease made by the Metropolitan Company to the New York Company, the Metropolitan Company parted with the possession of its entire railroad system; that the Metropolitan Company has no other resources wherewith to meet the fixed charges on the mortgage indebtedness of its said

system so leased, and embraced in said mortgage to your orator or to meet the accruing rentals of said lines so leased to the Metropolitan Company or its predecessors and by the Metropolitan Company so leased to the New York Company and embraced in said mortgage to your orator or to meet other indebtedness or liabilities of the Metropolitan Company than the rentals reserved under said lease made by the Metropolitan Company to the New York Company as part of which said New York Company agreed to pay such fixed charges and such rentals and to perform the other covenants therein contained, and that said Metropolitan Company is now insolvent and unable to meet its obligations, and by reason of the matters hereinbefore alleged, it is and will be unable to perform its covenants and obligations under said mortgage dated March 21, 1902.

Your orator further charges that the New York Company is insolvent and unable to meet its obligations, and that by a decree made by this Court on or about October 25, 1907, in the suit above mentioned of The Pennsylvania Steel Company and The Degnon Contracting Company against the New York Company this Court did order, adjudge and decree and find that the said New York Company was insolvent, and your orator alleges that the said New York Company and said receivers thereof have failed and neglected to pay the instalment of rent due and payable by it on October 15, 1907, under the said lease of the Metropolitan Railway Company to the New York Company, Exhibit B, and have therein wholly made default and have also failed and neglected to pay the instalment of rent due on October 13th, 1907, under the lease of the Third Avenue Company to the Metropolitan Company and are in default thereunder as hereinbefore alleged.

XVII. It is provided among other things by said mortgage to your orator, Exhibit A, that upon filing a bill in equity or upon other commencement of judicial pro-

ceedings by your orator to enforce any right under said mortgage, your orator should be entitled, as a matter of right, to the appointment of a receiver of the railroads property and premises thereby mortgaged and pledged to your orator and of the tolls earnings, revenue, rents, issues, profits and other income thereof with such powers as the Court or Courts making such appointment should confer. Your orator alleges on information and belief that the property subject to the lien of the mortgage to your orator, Exhibit A, is inadequate security for the protection of the holders of the bonds issued thereunder, and unless receivers of such mortgaged property be appointed the interests of your orator and of the bondholders its represents will be greatly injured and the value of the security which your orator has for their protection will be further greatly impaired and diminished and that it is necessary for the protection of your orator and of the holders of said bonds that a receiver or receivers be appointed in this cause of the railroad property and premises mortgaged and pledged to your orator and of the tolls, earnings, revenue, rents, issues, profits, and other income thereof.

XVIII. Your orator has been requested by persons owning or representing a large number of the bonds issued under and secured by said mortgage to your orator dated March 21, 1902, to enforce their rights under said mortgage and to institute proceedings for the foreclosure of the property mortgaged and pledged thereunder.

XIX. Your orator further shows that no proceedings at law or suits in equity have been begun or commenced by your orator save as above mentioned or, as your orator is informed and believes, by any holder of any of the bonds secured by said mortgage dated March 21, 1902, or of any coupons thereto attached, to enforce the payment of the sums so covenanted to be

paid by the Metropolitan Company under the terms of the said mortgage and that the amount in controversy in this suit exceeds five thousand dollars.

XX. The said property mortgaged and pledged to your orator as aforesaid, is now in the possession of this Court through its receivers, appointed by its orders as hereinabove set forth, and upon application by your orator leave has been granted to your orator to include as defendants herein the said Adrian H. Joline and Douglas Robinson as receivers of the New York Company and the said Adrian H. Joline and Douglas Robinson as receivers of the Metropolitan Company.

IN CONSIDERATION WHEREOF and for as much as your orator is remediless in the premises according to the strict rules of the common law and can only have relief in a Court of Equity where matters of this kind are properly cognizable, your orator therefore prays the aid of this Honorable Court:

1. That the said defendants may be required to make answer respectively unto all and singular the matters hereinbefore stated and charged as fully and particularly as if the same were herein expressed and they thereunto particularly interrogated but not under oath, answer under oath being hereby expressly waived.

2. That an account may be taken of all property subject to the lien of said mortgage dated March 21, 1902, and that said mortgage may be decreed to be a valid lien upon all and singular the railroads, railroad routes, estates, leaseholds, properties, premises, rights, privileges and franchises therein described, and upon all the stocks, bonds and other securities mortgaged and pledged to your orator or held by it subject to the provisions of said mortgage (save and except such property as has been released from the lien thereof as in this bill particularly described), that

an account be had of all improvements and additions made since the date of said mortgage upon and to any of said railroads or property, real and personal, and any and all equipment therefor and renewals or replacements of the same or of any part thereof or of the appurtenances and also of all and every other railroad which the defendant Metropolitan Street Railway Company has acquired or constructed since the date of said mortgage by means of the proceeds of any of the bonds secured by said mortgage and all power houses, real estate, equipment and other property, real and personal, appurtenant thereto, and that said mortgage or deed of trust may be declared to be a valid lien upon all such property.

3. That unless the defendant the Metropolitan Street Railway Company pay within a short day to be fixed by this Court into this Court or unto the Third Avenue Railroad Company or to the persons entitled thereto the rental due and payable on October 13th, 1907, under the Lease between The Third Avenue Railroad Company and the defendant Metropolitan Street Railway Company dated April 13, 1900, and unless the said defendant pay to your orator the costs, expenses and allowances of this suit in that behalf incurred or expended, then that the said defendant Metropolitan Street Railway Company and all persons claiming under or through it may be forever barred and foreclosed of and from any equity of redemption of and claim of and in the railroads, property and premises conveyed to your orator as Trustee and described in said mortgage dated March 21, 1902, and all other property declared to be subject to the lien of said mortgage; that all and singular the railroads, railroad routes, estates, leaseholds, properties, premises, rights, contracts, equipment, privileges and franchises mortgaged and pledged to your orator (save and except such property as has been released from the lien of said mortgage as aforesaid), and all stocks, bonds and

other securities mortgaged and pledged to your orator or held by it subject to the lien of said mortgage, and all other property which may be declared by this Court to be subject to the lien of said mortgage, may be sold in one parcel and as an entirety under a decree of this Honorable Court; that it may be decreed that upon such sale the whole of the principal sum of the bonds secured by said mortgage be immediately due and payable; that the proceeds of said sale may be brought into this Court to be administered by it as may be equitable and proper; that an account may be taken of the bonds secured by said mortgage dated March 21, 1902, and of the amount due and on said bonds for principal or interest or otherwise; and that in case of the insufficiency of such proceeds or of such portion thereof as may be applicable thereto to pay in full the amount of the principal and interest so due and unpaid upon the bonds secured by said mortgage dated March 21, 1902, then outstanding, a judgment may be rendered in this cause for such deficiency against the defendant Metropolitan Street Railway Company.

4. That pending this suit a receiver or receivers be appointed with the usual powers of receivers in like cases of the railroads, property and premises mortgaged and pledged in said mortgage to your orator, dated March 21, 1902, and of the tolls, earnings, income, rents, issues and profits thereof and that such directions may be made with respect to such receivership as may be equitable and proper, and that pending this suit a writ of injunction may be issued out of and under the seal of this Honorable Court directing, commanding, enjoining and restraining the said defendant Metropolitan Street Railway Company, its officers, directors and agents and all other persons whomsoever from interfering with, transferring, selling or disposing of any of the property of the said Metropolitan Street Railway Company under the control of said receiver or receivers and from selling, transferring, con-

veying or otherwise disposing of or encumbering any of the property, rights or franchises of the said Metropolitan Street Railway Company.

5. That your orator may have such other and further relief in the premises as may be just and equitable and as to your Honors shall seem just.

May it please your Honors to grant to your orator a writ or writs of subpœna to be directed to the said defendants Metropolitan Street Railway Company, New York City Railway Company, Adrian H. Joline and Douglas Robinson as Receivers of New York City Railway Company and Adrian H. Joline and Douglas Robinson as receivers of Metropolitan Street Railway Company, The Pennsylvania Steel Company and The Degnon Contracting Company, therein and thereby commanding them and each of them at a certain time and under a certain penalty therein to be named, to be and appear before your Honors in this Honorable Court then and there severally to answer all and singular the matters aforesaid, but not under oath, answer under oath being hereby expressly waived, and to stand to abide and perform such other and further orders or decrees as to your Honors shall seem meet.

MORTON TRUST COMPANY,
BY H. M. FRANCIS.
Secretary
Complainant.

(SEAL)

BRONSON WINTHROP,
Solicitor for Complainant and of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York, } ss. :
CITY & COUNTY OF NEW YORK,

HARRY M. FRANCIS being duly sworn deposes and says, that he is the Secretary of Morton Trust Company, the above named complainant; that he has read the foregoing bill of complaint and knows the contents

thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief and as to those matters he believes the same to be true; that the seal affixed to said bill of complaint is the corporate seal of said complainant and was so affixed by its authority.

H. M. FRANCIS.

Sworn to before me this 9th day of November, 1907.

E. J. BLEEZARDE,
Notary Public,
Richmond Co.
Certificate filed in New York Co.

(SEAL)

Filed 9th November, 1907.

Exhibit A referred to in the foregoing bill of foreclosure of the Morton Trust Company :

(A copy of the Mortgage of the Metropolitan Street Railway Company dated March 21, 1902, which is the same as Schedule B attached to Exhibit D hereto annexed.)

Exhibit B referred to in the foregoing bill of foreclosure of the Morton Trust Company :

(A copy of the Lease of the Metropolitan Street Railway Company to the Interurban Street Railway Company, which is the same as Schedule A attached to Exhibit D hereto annexed.)

Exhibit C referred to in the foregoing bill of foreclosure of the Morton Trust Company :

(A copy of the bill, answer, and order appointing receivers in the suit of the Pennsylvania Steel Company against the New York City Railway Company, annexed to this return as Exhibits A, B, and C.)

Exhibit D referred to in the foregoing bill of foreclosure of the Morton Trust Company :

(A copy of the petition of the Metropolitan Street Railway Company and of the order extending the

receivership to the properties of that company, annexed to this return as Exhibits D and E.)

Exhibit E referred to in the foregoing bill of foreclosure of the Morton Trust Company :

(A copy of the bill of complaint of the Morton Trust Company, which is the same as that annexed to this return as Exhibit H.)

Exhibit F referred to the foregoing bill of foreclosure of the Morton Trust Company :

(A copy of the order appointing receivers under the bill of complaint of the Morton Trust Company, annexed to this return as Exhibit J.)

Exhibit G—Referred to in the Foregoing Bill of Forelosure of Morton Trust Company.

THIS INDENTURE, made the thirteenth day of April, in the year nineteteen hundred, between THE THIRD AVENUE RAILROAD COMPANY, party of the first part, and METROPOLITAN STREET RAILWAY COMPANY, party of the second part, WITNESSETH : Parties.

WHEREAS, the parties hereto are street surface railroad companies organized and existing under the laws of the State of New York ; and

WHEREAS, the party of the first part owns and operates street surface railroads and railroad routes in the City of New York, beginning at the intersection of Park Row and Broadway, thence extending along Park Row, the Bowery, Third Avenue, to the Harlem River; also extending from the North River at the foot of 130th Street, thence through 130th Street, Manhattan Street and 125th Street to the East River; also extending from 125th Street through Amsterdam Avenue to the terminus of said avenue; and Routes.

WHEREAS, said party of the first part also owns the following pieces or parcels of land, with the buildings Real Estate.

and improvements thereon, situated, lying and being in the City of New York and State of New York:

1. Power house and depot at the Bowery, Bayard and Elizabeth Streets, being a lot of land one hundred feet on the Bowery and Elizabeth Street, and two hundred feet on Bayard street.

2. Power house and depot at Third and Second Avenues, 65th and 66th Streets, being a lot of land two hundred feet ten inches on Third and Second Avenues, and six hundred and ten feet on 65th and 66th Streets.

3. Depot on Third and Lexington Avenues, 129th and 130th Streets.

4. Power house and depot on Amsterdam Avenue, 128th and 129th Streets.

5. Car house on 129th and 130th Streets, east of Tenth Avenue.

6. Power house and depot at Amsterdam Avenue, between 185th and 186th Streets.

7. Power house and depot at Kingsbridge Road and Harlem River, 216th and 218th Streets.

Stocks owned.

AND WHEREAS, the party of the first part is the lawful owner of the following amounts of the capital stock of the following-named railroad companies (hereinafter referred to as "Controlled Companies"), all of which are operating, or were organized to operate, street railroads in said City of New York, or in the portion of Westchester County, in said State of New York, which is adjacent to said City of New York:

NAME OF COMPANY.	Total issued capital.	Amount owned by Railroad Company.
Union Railway Company of New York City	$2,000,000	$2,000,000
Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company	$2,500,000	$1,671,100
Dry Dock, East Broadway and Battery Railroad Company	$1,200,000	$1,128,700
Kingsbridge Railway Company	$8,600	$8,600

AND WHEREAS, said Union Railway Company of New York City is the lawful owner of the following amounts of the stock of the following-named railroad companies (likewise hereinafter referred to as "Controlled Companies"), all of which are operating, or were organized to operate, street railroads in said City of New York, or in said portion of Westchester County adjacent thereto: Stocks controlled.

Name of Company.	Total issued capital.	Amount owned by Union Railway Company.
The Yonkers Railroad Company	$1,000,000	$992,500
Westchester Electric Railroad Company	$500,000	$500,000
Southern Boulevard Railroad Company	$250,000	$248,300
Tarrytown, White Plains and Mamaroneck Railway Company	$300,000	$300,000

Now, therefore, the party of the first part, in consideration of one dollar, paid by the party of the second part, the receipt whereof is hereby acknowledged, and the covenants and agreements hereinafter contained to be kept and performed by the party of the second part, has granted, leased and demised and doth by these presents grant, lease and demise to the party of the second part, and its successors, all the railroads of the party of the first part hereinbefore mentioned or hereafter acquired or to be constructed during the pendency of this lease, together with all the franchises, rights, powers and privileges of the party of the first part, to maintain, construct and operate railroads; also all the benefits and rights arising from all or any contracts, leases or agreements which the party of the first part now has or may hereafter be entitled to; also all the lands and tenements, above described, and all easements, fixtures, personalty and property of every description of the party of the first part, which Grant.

franchises, rights and property so leased and demised are subject to the various burdens and conditions by which they are held by the party of the first part.

This lease includes not only all the property of the party of the first part on the date when the same takes effect, but all subsequent additions as the result of purchase, or merger or consolidation with any of the Controlled Companies or any other corporations, or otherwise, including all connections, extensions and branches of the existing railroad or railroads now or which may be hereafter constructed, and all leased lines connected therewith, and all rights and franchises of the party of the first part, to make connections, extensions, branches and leases of other lines, and all extensions of the franchises of the party of the first part to construct, maintain and operate a railroad, and all poles, trolleys, conduits, feeders, cables, wires and machinery for producing and distributing electrical or other power, and all cars, equipment or other personalty hereafter acquired by the party of the first part.

Term of lease. TO HAVE AND TO HOLD the same and each and every part thereof unto the party of the second part and its successors for the full term of nine hundred and ninety-nine years from the day of the date hereof, as the same may have been acquired by the party of the first part, to be used, maintained and operated by the party of the second part, in accordance with the requirements of the Charter, and subject to the conditions of the grants to the party of the first part; and subject to the provisions of this agreement the said party of the first part doth also hereby grant to the party of the second part the control of the expenditure of the moneys belonging to the party of the first part at the time of the taking effect of this lease, which are in the treasury of the party of the first part, whether on deposit or otherwise, and of all rights of action for the collection of money, and also all rights of action for the enforcement of rights or privileges for the construction, maintenance or operation of a railroad which are

proper or essential to such construction, maintenance or operation.

Sale of Income Bonds.

The party of the first part, also for like consideration, has sold, assigned, transferred and set over, and by these presents does hereby sell, assign, transfer and set over to the party of the second part three hundred and fifty-seven (357) Second Mortgage $1,000 Income Bonds of the Forty-Second Street, Manhattanville and St. Nicholas Avenue Railway Company, dated July 1, 1885, and bearing interest at the rate of six (6) per cent. per annum, payable as earned; also the subscription on behalf of the party of the first part for the balance of the authorized capital of the Kingsbridge Railway Company of one million dollars, and the shares of capital stock in the respective Controlled Companies hereinbefore first enumerated which are or may hereafter be owned by it, together with all right, title and interest in law or in equity which the party of the first part has in and to said bonds and shares of capital stock and said subscription, and hereby agrees to make specific transfers of the certificates of said stock upon the ratification and approval of this lease by the stockholders of the respective parties, and to cause said transfers to be made upon the stock books of said corporations respectively; provided, however, that for and during the first four years of this lease the net earnings of said corporations applicable to the payment of dividends upon the said shares of capital stock shall be and form a part of the earnings of the party of the first part. The foregoing assignment and transfer of said bonds, subscription and shares of stock are subject, however, to the pledge thereof to the Morton Trust Company Trustee under the mortgage hereinafter described and to the rights of the said Trust Company as Trustee under said mortgage, and the party of the second part hereby agrees to and joins in such pledge.

Of Subscription and Stocks.

And it is hereby agreed by and between the parties to this instrument that from and after the date of the

execution and delivery of the said mortgage, the party of the second part, in reference to said bonds and stocks, shall have the same rights therein which under the terms and provisions of said mortgage are reserved to the party of the first part, and in all matters pertaining thereto and provided in said mortgage the party of the second part shall be and is hereby substituted in place and stead of the party of the first part as its assignee and as the purchaser and owner of said stocks and bonds and of all equity of redemption therein.

Lessee to maintain property.

And in consideration of the premises, the party of the second part has covenanted and agreed, and doth by these presents covenant and agree, for itself, its successors and assigns, with the party of the first part, its successors and assigns, that the party of the second part at all times during the continuance of this lease will maintain, manage, use and operate and keep in good working order, condition and repair, at its own expense, the entire line of the said demised railroad or railroads, and all extensions and branches thereof which are now or may hereafter be constructed, and all fixtures and appurtenances thereof which now are, or hereafter may be constructed; and also keep the personalty hereby demised in good working order, condition and repair, so that the traffic and business of said railroad shall be encouraged and developed and reasonable accommodation given to the public.

To pay Taxes, &c.

And said party of the second part further agrees that it shall and will pay, satisfy and discharge all Municipal, County, State or Government taxes and assessments, license fees or other charges of any description whatever, which during the term hereby granted, may be imposed upon the property hereby demised or any part thereof, or upon any additions or extensions thereof, or upon the lessor or its capital stock, franchises or business assessed by reason of the property and franchises hereby demised, or by reason of any future increase thereof or resulting from the use and operation by the lessee of the property hereby

demised, or from any extensions and additions thereto, or the construction of other lines in connection therewith.

The intention of the parties hereto being that the rents hereby agreed to be paid by said party of the second part shall not be in anywise impaired or diminished by any lien, assessment, tax or charge upon the demised property, real or personal, or upon any conditions or extensions thereof, or upon the lessor or lessee by reason thereof.

Surrender.

The party of the second part further agrees that it will deliver up said railroad or railroads and all buildings, fixtures and appurtenances at the expiration of the lease or whenever the same shall become inoperative, in good order and repair, and will pay therefor to the party of the first part an annual rental, as follows :

To pay Dividends.

For a term of four years from the date of this lease a sum equal in the aggregate to the net earnings from the operation of the railroad hereby leased, and of the railroads of the Controlled Companies less the proportion thereof applicable to the shares of stock not owned by the party of the first part. Said net earnings shall be ascertained by deducting from the gross earnings, operating expenses, taxes accrued and proportionately chargeable to the period aforesaid, interest upon the bonds of the party of the first part, and of the Controlled Companies ; repairs, replacements, expenses of litigation and all judgments recovered for damages arising from the operation of the said railroads during said period.

Proper books of account shall be kept by the party of the second part, showing the gross earnings from operation and an itemized account of the foregoing charges, which shall at all times be open to the inspection of the stockholders. From and after the expiration of said four (4) years the party of the second part will pay to the party of the first part quarter yearly a dividend upon the outstanding capital stock of the party of the first part at the rate of (5) per centum per annum for a period of two (2) years ; from

and after the expiration of said two (2) years, for a period of four years thereafter, at the rate of six (6) per centum per annum; and from and after the expiration of said four (4) years at the rate of seven (7) per centum per annum during the remainder of the term of said lease. The rentals and dividends herein provided for are based upon the present issued capital stock of the Third Avenue Railroad Company, viz., $16,000,000, and such rentals and dividends shall not be increased in case of the issue of additional stock by such Company unless such increase be expressly consented to in writing by the party of the second part. The party of the first part hereby agrees that none of its stock in addition to said $16,000,000 shall be issued without such express written consent of the party of the second part. The party of the second part may at its option pay the rentals or dividends directly to the holders of the capital stock of the party of the first part, and may enter into agreements with any holders of such stock for the payment of dividends to, and guaranteeing the payment of dividend to, the holders of such stock at the rate specified in this contract, but no such agreement shall be made which shall not be open to the holders of all of the then outstanding stock of the party of the first part which shall have been issued with the consent of the party of the second part as aforesaid.

To replace property.

And the party of the second part further covenants with the party of the first part, that it will replace any part of the demised property which may be destroyed by fire or other cause and will at the termination of this lease, or whenever the same ceases to be operative, surrender the franchises, rights and privileges aforesaid, unimpaired by any act or default of the party of the second part.

Indemnity against suits and judgments.

And the party of the second part further covenants and agrees after the expiration of the first four years of this lease to indemnify and save harmless the party of the first part from all expenses of prosecution or defence of any action or legal proceeding which shall

be based upon a cause of action accruing after the expiration of said four years, and also pay any judgment that may be recovered against the party of the first part upon a cause of action so accruing, which may arise from the operation of the railroad or railroads of the party of the first part, and that it will indemnify and save harmless the party of the first part from all claims growing out of the maintenance and operation of said railroad after the expiration of said four years. But it is distinctly understood and agreed that during said period of four years all expenses of litigation and all judgments recovered or claims paid, which expenses, judgments and claims arise out of the operation of said railroad or railroads, shall be paid from the earnings of the road and charged to the operating expenses thereof.

Re-deliver property or substitutes.

The party of the second part also covenants and agrees that it will at the termination of this lease or when for any cause it may cease to be operative, transfer, deliver and return to the party of the first part in good condition, the horses, harnesses, cars, tools, implements, machinery, equipment, stable equipments, office furniture and fixtures and all property of every kind leased to and used by the party of the second part in the maintenance and operation of the railroad or railroads aforesaid, except that which is hereby absolutely transferred to the lessee or which has passed from existence by death or destruction or other cause, and shall also deliver the substitutes, increments and additions provided or made by the party of the second part; and the substitutes for the property impossible to deliver by reason of death or destruction shall be equal in value to that for which they are substituted.

Lessor to do certain corporate acts.

And in consideration of the premises, the party of the first part for itself, its successors and assigns, covenants with party of the second part, its successors and assigns, that the party of the first part and its successors, whenever required by the party of the second part or its successors, during the continuance

of this lease, shall do and perform any and every corporate act which may be necessary, useful or appropriate to secure to the party of the second part or its successors, the full enjoyment of the demised premises, including the existing road or roads and any and all connections, extensions and branches and the right to construct, maintain and operate any connections, extensions or branches which the party of the second part may desire to construct and operate of every franchise, right, easement, power and privilege connected therewith or appertaining to the same, including its right to a change of motive power and all other rights and powers, now possessed, or which may be hereafter possessed, by the party of the first part or its successors, and that it will maintain its corporate organization for the purposes hereof, and will apply for all such connections, extensions and branches and changes of motive power as the party of the second part may reasonably demand, all expenses incurred therefor by the party of the first part to be borne by the party of the second part, but the expenses of the maintenance of the corporate organization of the party of the first part shall not exceed the sum of twenty-five hundred dollars annually.

Lessee to pay expense of maintenance.

And the party of the first part further covenants and agrees that it will hereafter at any time, upon the request of the party of the second part, give, make, execute and deliver such further and other conveyances and assurances, papers and instruments as may be necessary or proper to carry into full force and effect all the objects and purposes of this indenture; that it, the party of the first part, is well and lawfully possessed of the premises hereby demised and has full power to convey and lease the same as aforesaid, and that the same, in the quiet enjoyment of the party of the second part, the party of the first part shall and will warrant and defend.

Lessor to execute further instruments.

And the party of the first part further covenants and agrees that the party of the second part shall at all times during this lease have the full and exclusive right

Lessee to regulate fares.

to manage, use and control said demised property, and to regulate and determine the rates of toll and charges of transportation over the whole or any part of said demised railroad and premises, and to charge and collect the same and appropriate the same to its own use, and shall have, use, exercise and enjoy all the rights, powers and authority, of the party of the first part in that behalf, and all rights, powers, easements and privileges, now possessed or which may hereafter be acquired by the party of the first part necessary or convenient to the construction, maintenance, use, operation, possession, enjoyment and management of said railroad or railroads and any and all connections, extensions and branches thereof which can or may be lawfully exercised and enjoyment under its charter and the laws applicable thereto in or about or in connection with said demised property and in the maintenance and operation thereof.

Lessee to act as attorney.

And to enable the party of the second part to beneficially enjoy said property, rights, privileges, and benefits herein demised, mentioned and specified, the party of the first part hereby appoints the party of the second part, its successors and assigns, its attorney irrevocable, with full power and right, at the expense of the party of the second part, to use the name of the party of the first part in and about the business, maintenance, operation and use of said demised property, with power to make any and all contracts in proper furtherance of the objects hereinbefore set forth, with any person or corporation in the name of the party of the first part and under its corporate seal or otherwise, and in its name, and under its corporate seal to make and file certificates, apply for and receive consents and take all necessary proceedings for the construction, maintenance and operation of such extensions or branches of said railroad or railroads as said party of the second part shall desire, and generally to do all other acts and things in and about the premises which the party of the first part might lawfully do, and at the expense of the party of the second part

To file certificates.

to use the name and seal of the party of the first part, in and about any legal proceedings and suits either at law or in equity, as to the party of the second part may seem necessary and requisite in carrying out the objects and intent of this indenture.

To defend suits.

WHEREAS, the party of the first part, with the consent of its stockholders, owning more than two-thirds of its capital stock, and of the Board of Railroad Commissioners of the State, has executed and delivered, or is about to execute and deliver, to the Morton Trust Company, as trustee, a mortgage known as its First Consolidated Mortgage, to secure the payment of its bonds issued and to be issued thereunder, to an amount not exceeding in the aggregate fifty million dollars; and

Lessee's agreement for guaranty of bonds.

WHEREAS, a part of said issue, amounting in the aggregate to thirty-five million dollars, has been or is about to be issued and, at the request of the party of the second part, purchased by Messrs. Kuhn, Loeb & Company, bankers in the City of New York, and which purchase is conditioned upon the guarantee of the payment of the principal and interest of said bonds by the party of the second part;

NOW, THEREFORE, as part of the consideration of this lease, and to induce the purchase of said bonds as aforesaid, and as an additional covenant upon the party of the second part, the said party of the second part hereby agrees to, and by these presents does hereby, unconditionally guarantee the prompt payment of the principal and interest of all the bonds of the party of the first part issued, and to be issued, under the mortgage aforesaid, which have been issued before this lease takes effect or which shall be issued hereafter.

And the party of the second part does hereby covenant and agree with said Morton Trust Company, as Trustee of said mortgage, and with each present and future holder of said bonds issued, or to be issued, under said mortgage, that in default of payment by the

party of the first part it will pay the principal and interest of each bond that has been or may be issued under said mortgage, and hereby guarantees to each such present and future holder of said bonds the prompt payment of the principal and interest thereon. The party of the second part shall cause its guarantee to be duly placed upon each bond issued or to be issued or reissued under said mortgage, and shall, if and when requested by said Morton Trust Company, execute and deliver to it as Trustee of said Mortgage, a separate agreement embodying the guaranty of said bonds.

The party of the second part hereby covenants that said guarantee shall be, and it is hereby declared to be, unconditional, and not be dependent upon, any act by the party of the first part, and not liable to be affected by any default of the party of the first part.

Lessee to disburse proceeds of bonds sold.

AND, WHEREAS, the party of the first part has incurred a large floating debt in the reconstruction of its said railroad and the railroads of the Controlled Companies hereinbefore named, and in making a change of motive power upon said railroads and has entered into contracts for the performance of such work, and further expenditures for the improvements upon and additions to the property of the party of the first part will, from time to time, be necessary or advisable, it is hereby agreed and understood that the proceeds of the sale of the bonds secured to be paid by the mortgage to the Morton Trust Company, as aforesaid, and the payment of which is guaranteed by the party of the second part as a part of the consideration of this lease shall be applied as provided and agreed in Article Second of said mortgage, and said article, so far as it is applicable to the proceeds of said bonds, is thereby referred to as and made part of this instrument: and

WHEREAS, it is in substance provided in subdivision (1) of article second of said mortgage, that such of the proceeds of the sale of thirty-five million dollars of bonds as are not applied to the payment or acquisition of floating debt, and to the lawful expenses

incurred and to be incurred in carrying through the readjustment of the affairs of the Railroad Company, in pursuance of which this mortgage is created, shall be applied by the Railroad Company to improvements, in additions to, or extensions, of the property of the Railroad Company or of the property of its Controlled Companies, or to the purchase or construction of other street railroads, or the purchase of other property which shall be and become subject to the lien of said mortgage; and

WHEREAS, it is further provided in subdivision (3) of article second of said mortgage, as to the remainder of said bonds, viz.: one million two hundred thousand dollars face value thereof, that the Trustee shall, from time to time, deliver said remaining bonds to said Railroad Company, or its order, and that the proceeds of the sale of said bonds shall be applied to improvements upon, additions to, or extensions of its property, or of the property of the Controlled Companies, or to the acquisition of street railroads or other properties which shall be subject to the lien of said mortgage;

NOW, THEREFORE, it is hereby covenanted and agreed by and between the parties to these presents as follows: The expenditure and application of the said bonds, or the proceeds thereof, referred to in the first and third subdivisions of article second of said mortgage above quoted, shall be made by and under the sole and exclusive direction of the party of the second part, and said bonds or the proceeds thereof applicable under the terms and provisions of said mortgage to improvements in, additions to, or extensions of the property of the party of the first part, or of the property of its Controlled Companies, or to the purchase or construction of other street railroads or of other property, shall be delivered or paid to the party of the second part, as and when the party of the second part shall make such improvements, additions, extensions, purchases and constructions which, under said mortgage,

are authorized to be made or paid for out of the proceeds of said bonds.

The party of the first part, as a part of the consideration of this lease, hereby grants to the party of the second part control of the expenditure of all and every of the bonds, or the proceeds thereof which, under the terms of said mortgage, are applicable to the purposes expressed in said mortgage as aforesaid, and hereby authorizes and empowers the party of the second part, as its irrevocable attorney, to apply them to the purposes enumerated in the said mortgage as aforesaid.

Lessor to deposit proceeds of bonds.

The party of the first part shall, if so requested in writing by the party of the second part, deposit the unexpended balance of the proceeds of the sale of said $35,000,000 of bonds, and also said $1,200,000 of bonds, or the proceeds of the sale thereof, with a Trust Company or Incorporated Bank of the City of New York, as Trustee, to be held and disposed of by such Trustee in accordance with the provisions of this contract. Such Trustee may at any time sell any of such bonds deposited with it on the written order of the party of the second part, in which case it shall receive the proceeds of said sale and hold the same subject to the terms of this contract.

Lessee to certify expenditures

It is further agreed by and between the parties hereto, that whenever the party of the second part, in the exercise of the power herein conferred, shall expend any money or incur or contract any indebtedness for any of the purposes expressed in the mortgage aforesaid, that it will certify the same by and under the hand of its President or Vice-President and its corporate seal, setting forth the amount and purpose of the expenditure made or indebtedness incurred, and that such expenditures were made or such indebtedness was incurred for purposes specified in said mortgage. Upon receipt of such certificate, the party of the first part, or such Trustee, as the case may be, shall pay over the sum so certified to have been expended, or a sum equal to the indebtedness so certified to have been incurred, to the party of the second part out of or from any proceeds of the sale of bonds

Lessor to pay.

secured by said mortgage purchased by Kuhn, Loeb & Company as aforesaid applicable thereto, and after the proceeds of the sale of Thirty-five million dollars of bonds heretofore recited to have been purchased by Kuhn, Loeb & Company shall have been exhausted, then, upon the same or like certificate the party of the first part or the said Trustee as the case may be shall pay the sum expended or indebtedness incurred by the delivery of an equal amount of said bonds, viz., the one million two hundred thousand dollars of said bonds specified in subdivision (3) of Article Second of said mortgage hereinbefore quoted, or in case of the sale of such bonds by the payment of such amount in cash from the proceeds thereof. The certificate of the President or Vice-President of the party of the first part shall be full protection to the Trustee for any action taken upon the strength thereof, and may be accepted by the Trustee as conclusive evidence of any fact therein stated.

Lessor to issue additional bonds.

Whenever it shall be deemed by the party of the second part expedient to extend the line or lines of the railroad hereby demised or to acquire additional real estate or construct additional buildings for the operation of said railroad, or to change the motive power upon said railroad, and the proceeds of the sale of said $35,000,000 of bonds and said $1,200,000 of bonds have been exhausted, then upon the request of the party of the second part the party of the first part shall authorize, execute and deliver to the party of the second part the negotiable bonds of the party of the first part in the usual form for the amounts, the expenditure of which shall be required for such extension, acquisition, construction or change, and upon the like request of the party of the second part, shall secure such bonds by a mortgage or mortgages upon all its property and franchises, but such bonds when issued shall be applied solely to the purposes for which the same are issued.

Lease subject to debts, &c.

This lease is made subject to all debts and liabilities of the party of the first part, except debts due or lia-

bilities incurred to the party of the second part. The payment of all bonds which shall be issued by the party of the first part under the mortgage to the Morton Trust Company hereinbefore referred to, when issued and disposed of as hereinbefore provided, or as provided in said mortgage or in this lease, shall be guaranteed by the party of the second part as hereinbefore provided, and as a part of the consideration of this lease. The party of the second part shall, from time to time, do all the things which shall be necessary to enable the party of the first part to comply with the provisions of said mortgage, and shall from time to time provide the party of the first part with such funds as shall be necessary to retire or acquire, in accordance with the terms of said mortgage, the underlying bonds and funded obligations therein mentioned, and for all funds so provided the party of the second part shall receive an amount of the reserved bonds secured by said mortgage which it is by the terms thereof proper to issue on account of the particular underlying bonds or obligations to be retired or acquired.

Lessor to provide renewal bonds.

Whenever any of the funded debts of the party of the first part (the principal or interest of which has been or may hereafter be guaranteed by the party of the second part) shall become due and payable, the party of the first part shall, upon the request of the party of the second part, provide for the renewal or consolidation thereof by the issue of renewal or consolidation bonds in the customary form, and upon like request shall secure the same by mortgage or mortages upon all its property and franchises.

Lessor to re-enter on default.

It is further mutually agreed, that in case of default in the payment of the rent as aforesaid, or failure by the party of the second part to comply with all or any of the terms of this lease, and such default shall continue for a period of six months, the party of the first part shall have the right to re-enter and re-possess all the demised property, together with the improvements and betterments thereon or thereto appertaining,

which right shall not lapse or cease to exist on account of any waiver or condonation of another prior default by implication or agreement, and such re-entry shall not impair the claim of the party of the first part for lawful damages for any defaults of the party of the second part.

Lessor to maintain organization.

The party of the first part, its successors and assigns, covenants with the party of the second part, and its successors and assigns, that it will maintain its corporate organization and existence, and will take all necessary steps to secure such extensions of its corporate existence and charter as it shall at any time be entitled to under the laws of the State of New York, to the end that the party of the second part shall be fully secured in the possession and enjoyment of the property hereby demised to the full meaning and intent of the parties hereto.

This lease is subject to such rights as the Manhattan Railway Company has or may have in reference to the transfer of passengers under an agreement now existing between the said Manhattan Company and the party of the first part.

IN WITNESS WHEREOF, the said parties have caused their respective corporate seals to be affixed, and their respective corporate names to be subscribed, by their President and Vice-Presidents respectively, to this indenture the day and year first above written.

THE THIRD AVENUE RAILROAD COMPANY,
By H. HART,
[SEAL.] *Vice-President.*
Attest:
WILLIAM N. AMORY,
Secretary.

METROPOLITAN STREET RAILWAY COMPANY,
By H. H. VREELAND,
[SEAL.] *President.*
Attest;
CHARLES E. WARREN.
Secretary.

U. S. Revenue
Stamp $1.00
(Cancelled.)

STATE OF NEW YORK,
City and County of New York, } ss. :

On this 16th day of April, A. D. 1900, before me personally came Henry Hart, to me known, who, being by me duly sworn, did depose and say that he resided in the City of New York and State of New York; that he is the Vice-President of The Third Avenue Railroad Company, the corporation described in and which executed the foregoing instrument as grantor; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by the like order.

And the said William N. Amory, being duly sworn, did depose that he is the Secretary of said Railroad Company, the corporation described in and which executed the above instrument as grantor; that said Henry Hart is the Vice-President thereof; that he knows the corporate seal of said Company, and that by authority and direction of a resolution of the Board of Directors of said Railroad Company, the foregoing instrument was signed by Henry Hart as Vice-President and by deponent as Secretary of said Company, and the corporate seal of said company thereto affixed, and that the seal now affixed to said instrument is the corporate seal of said Company.

DANL. W. PATTERSON,
[SEAL.] Notary Public,
New York County.

STATE OF NEW YORK,
City and County of New York, } ss. :

On this 16th day of April, A. D. 1900, before me personally came H. H. Vreeland, to me known, who, being by me duly sworn, did depose and say that he resided in the City of New York and State of New York; that he is the President of the Metropolitan

Street Railway Company, the corporation described in and which executed the foregoing instrument as grantee; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed the same thereto by the like order.

And the said Charles E. Warren, being duly sworn, did depose, that he is the Secretary of the said Metropolitan Street Railway Company, the corporation described in and which executed the above instrument as grantee; that said H. H. Vreeland is the President thereof; that he knows the corporate seal of said Company, and that by authority and direction of a resolution of the Board of Directors of said Railway Company the foregoing instrument was signed by H. H. Vreeland as President and by deponent as Secretary of said Company, and the corporate seal of said Company thereto affixed, and that the seal now affixed to said instrument is the corporate seal of said Company.

F. J. MARINELLI,
Notary Public,
New York County.

[SEAL.]

CERTIFICATE OF THE SECRETARY

OF

THE THIRD AVENUE RAILROAD COMPANY.

This lease and contract having been entered into by the directors of the Third Avenue Railroad Company, and of the Metropolitan Street Railway Company, under the corporate seal of each company, and a meeting of the stockholders of the Third Avenue Railroad Company having been called separately for the pur-

pose of taking the same into consideration, and due notice of the time and place of holding said meeting and the object thereof having been given by The Third Avenue Railroad Company, to the stockholders thereof, by written or printed notices stating the time, place and object of the meeting mailed to each of the persons in whose names the capital stock of said Company stood on the books thereof, at his post office address, or the legal representatives of such persons respectively, at least thirty days before the time of holding said meeting of such Company, and also published one a week for four weeks successively in the *Evening Post* and the New York *Times*, two newspapers published in New York County, where said Company has its principal office or place of business; and such meeting having been had pursuant to such notice, on the 17th day of May, 1900, and at the said meeting of stockholders, this contract or lease of the said directors having been submitted to the stockholders and considered, and a vote by ballot taken for the adoption or rejection of the same, each share of stock entitling the holder thereof to one vote;

NOW, THEREFORE, this is to certify that two-thirds and more of all the votes of stockholders cast in person or by proxy at such meeting were for the adoption of this lease and contract, and the same was approved by such vote.

IN WITNESS WHEREOF, I have hereunto affixed the corporate seal of the said The Third Avenue Railroad Company, and subscribed my name as Secretary, the 17th day of May, 1900.

[SEAL.]

W. N. AMORY,
Secretary.

CERTIFICATE OF THE SECRETARY

OF

METROPOLITAN STREET RAILWAY COMPANY.

This lease and contract having been entered into by the directors of the Third Avenue Railroad Company and of the Metropolitan Street Railway Company, under the corporate seal of each company, and a meeting of the stockholders of the Metropolitan Railway Company having been called separately for the purpose of taking the same into consideration, and due notice of the time and place of holding said meeting and the object thereof having been given by the Metropolitan Street Railway Company to the stockholders thereof by written or printed notices stating the time, place and object of the meeting mailed to each of the persons in whose names the capital stock of said company stood on the books thereof, at his post office address or the legal representatives of such persons respectively, at least thirty days before the time of holding such meeting of such company and also published once a week for four weeks successively in the *Evening Post* and The New York *Times*, two newspapers published in New York County, where said company has its principal office or place of business, and such meeting having been had pursuant to such notice on the 17th day of May, 1900, and at the said meeting of stockholders, this contract or lease of the said directors having been submitted to the stockholders and considered and a vote by ballot taken for the adoption or rejection of the same, each share of stock entitling the holder thereof to one vote;

NOW, THEREFORE, this is to certify that two-thirds and more of all the votes of stockholders cast in person or by proxy at such meeting were for the adoption

of this lease or contract and the same was approved by such vote.

IN WITNESS WHEREOF, I have hereunto affixed the corporate seal of said Metropolitan Street Railway Company, and subscribed by name as Secretary, the 17th day of May, 1900.

[SEAL.]

CHARLES E. WARREN,
Secretary.

Exhibit H. Referred to in the Foregoing Bill of Foreclosure of Morton Trust Company.

Agreement transferring Stocks and correcting Lease.

AGREEMENT, made the thirteenth day of May, in the year Nineteen hundred, between THE THIRD AVENUE RAILROAD COMPANY, party of the first part, and the METROPOLITAN STREET RAILROAD COMPANY, party of the second part, WITNESSETH :

WHEREAS, by a certain indenture of lease, dated April 13th, 1900, executed by and between the Third Avenue Railroad Company (hereinafter called the Railroad Company) and Metropolitan Street Railway Company (hereinafter called the Railway Company), it is recited that the Railroad Company is the lawful owner of the following amounts of the capital stock of the following named railroad companies, all of which are operating, or organized to operate, street railroads in the said City of New York, or in the portion of Westchester County, in the State of New York, which is adjacent to New York :

Name of Company.	Total Issued Capital.	Amount Owned by Railroad Company.
Union Railway Company of of New York City.....	$2,000,000	$2,000,000
Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company.	2,500,000	1,671,100
Dry Dock, East Broadway and Battery Railroad Company.	1,200,000	1,128,700
Kingsbridge Railway Company	8,600	8,600

and that the Union Railway Company of New York City is the lawful owner of the following amounts of the stock of the following named railroad companies, all of which are operating, or organized to operate, railroads in said City of New York, or in said portion of Westchester County adjacent thereto, all of which said railroad companies are referred to in said lease as "Controlled Companies":

Name of Company.	Total Issued Capital.	Amount Owned by Union Railway Company.
The Yonkers Railroad Company	$1,000,000	$992,500
Westchester Electric Railroad Company.....	500,000	500,000
Southern Boulevard Rail-Road Company.....	250,000	248,300
Tarrytown, White Plains and Mamaroneck Railway Company	300,000	300,000

And, Whereas, said lease recites that it includes not only all the property of the Railroad Company at the date when the same takes effect, but all subsequent additions as the result of purchase or merger or con-

solidation with any of the Controlled Companies, or any other corporation, or otherwise; and,

WHEREAS, by the terms and provisions of said lease said Railroad Company sold, assigned, transferred and set over unto the Railway Company all the shares of capital stock in their the respective Controlled Companies hereinbefore first enumerated which were, at the date of said lease, owned by, or which should thereafter be owned by it; and

WHEREAS, subsequent to the date of said lease, to wit: on or about the ninth day of May, Nineteen hundred, the Railroad Company acquired by purchase from the Union Railway Company, all the shares of stock owned by said last named company in the Controlled Companies hereinbefore secondly enumerated, and said stocks are now owned by the Railroad Company and not by the Union Railway Company; and,

WHEREAS, it was the intention of the parties to said lease that the Railroad Company should sell and assign to the Railway Company all the shares of stock which it should own in any of the Controlled Companies on the date when such lease should take effect;

NOW, THEREFORE, in consideration of said lease, and of the sum of One ($1) dollar paid to the Railroad Company by the Railway Company, the receipt whereof is hereby acknowledged, and to carry out and to fully effectuate the intent of the parties to the said lease, the Railroad Company has sold, assigned, transferred and set over, and by these presents does hereby sell, assign, transfer and set over unto the Railway Company, the shares of capital stock in the respective Controlled Companies hereinbefore secondly enumerated, and which it acquired by purchase from the Union Railway Company as hereinbefore stated, and which now are owned by it, and all shares in the capi- Transfers Stocks

tal stock of said Controlled Companies hereinbefore secondly enumerated, which it may hereafter acquire, together with all right, title and interest in law or in equity which the Railroad Company has and to said shares of capital stock.

The Railroad Company further agrees to make specific transfers of the certificates of said stock upon the ratification and approval of the lease by the stockholders of the respective parties, and to cause said transfers to be made upon the stock books of said corporations respectively; provided, however, that for and during the first four years of the lease, the net earnings of said corporations applicable to the payment of dividends upon the said shares of capital stock shall be and form a part of the earnings of the Railroad Company.

The foregoing assignment and transfer of said shares of stock are subject, however, to the pledge thereof to the Morton Trust Company, Trustee under the mortgage described in said lease, and to the rights of the said Trust Company as Trustee under such mortgage, and the Railway Company hereby agrees to and joins in the pledge of such shares of stock to the said Trustee.

And it is further agreed by and between the parties hereto, that all provisions in said lease contained in reference to the shares of stock in the respective Controlled Companies hereinbefore first enumerated, and the rights and interests of the respective parties thereunder shall be and they are hereby made applicable to the shares of stock in the respective Controlled Companies herein before secondly enumerated.

Corrects Lease. AND, WHEREAS, it is recited in said lease, in reference to the proceeds of the sale of the bonds of the Railroad Company secured to be paid by the mortgage to the Morton Trust Company, the payment of which bonds is guaranteed by the Railway Company as a part of the consideration of said lease, that it is provided in sub-division 3 of Article Second of said mort-

gage as to a certain remainder of said bonds, viz.: $1,200,000, that the Trustee shall, from time to time, deliver said remaining bonds to said Railroad Company, or its order, and that the proceeds of the sale of said bonds shall be applied to the improvements upon, additions to or extensions of its property, or of the property of the controlled companies, or to the acquisition of street railroads or other properties, which shall be subject to the lien of said mortgage; and

WHEREAS, the amount of said remainder of said bonds is $1,557,000 instead of $1,200,000, as recited in said lease, as by reference to Article Second of said mortgage to the Morton Trust Company will more fully appear, and the parties hereto desiring to correct said error in said recital, and to express accurately the intent of the parties to said lease;

NOW, THEREFORE, in consideration thereof, and to carry out the intent of the parties, it is hereby further agreed that as to said remainder of said bonds, viz.: $1,557,000, face value thereof, that the Trustee under said mortgage shall, from time to time, deliver said remaining bonds to said Railroad Company, or its order, and that the proceeds of the sale of said bonds shall be applied to improvements upon, additions to or extensions of its property or of the property of the Controlled Companies, or to the acquisition of street railroads or other properties, which shall be subject to the lien of said mortgage.

AND IT IS FURTHER AGREED by and between the parties hereto that all the provisions in said lease contained in reference to said $1,200,000 of bonds, face value thereof, and to the application and expenditure thereof, or of the proceeds thereof, and to the duties of the Trustee under said mortgage in reference thereto, and to the rights and interests of the respective parties to the lease therein, shall be, and hereby are, made applicable to the said remainder of bonds,

included in said total of $1,557,000, face value thereof, and that said lease, wherever said remainder of bonds is mentioned therein, as being $1,200,000 is hereby corrected so as to read $1,557,000, face value thereof.

IN WITNESS WHEREOF, the said parties have caused their respective corporate seals to be affixed, and their respective corporate names to be subscribed by their President or Vice-President respectively, to this indenture, the day and year first above written.

THE THIRD AVENUE RAILROAD COMPANY,
[SEAL.] By H. HART,
Vice-President.

Attest:
W. N. AMORY,
Secretary.

METROPOLITAN STREET RAILWAY COMPANY,
[SEAL.] By H. H. VREELAND,
President.

Attest:
CHARLES E. WARREN,
Secretary.

STATE OF NEW YORK,
City and County of New York, } ss.:

On the 17th day of May, A. D. 1900, before me personally came HENRY HART, to me known, who, being by me duly sworn, did depose and say that he resided in the City of New York and State of New York; that he is the Vice-President of the Third Avenue Railroad Company, one of the corporations described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said

corporation, and that he signed his name thereto by the like order.

O. L. HOAGLAND,
Notary Public (184),
New York County.

STATE OF NEW YORK,
City and County of New York, } ss.:

On this 17th day of May, A. D. 1900, before me personally came H. H. VREELAND, to me known, who, being by me duly sworn, did depose and say that he resided in the City of New York and State of New York; that he is the President of the Metropolitan Street Railway Company, one of the corporations described in and which executed the foregoing instrument; that he knew the seal of said cor oration; that the seal affixed to said instrument was : ch corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by the like order.

O. L. HOAGLAND,
Notary Public (184),
New York County.

(Endorsed):

THE THIRD AVENUE RAILROAD COMPANY

TO

METROPOLITAN STREET RAILWAY COMPANY.

LEASE AND ACCOMPANYING AGREEMENT.

STATE OF NEW YORK,
Office of the Secretary of State. }

Filed and recorded May, 1900.

J. B. H. MONGIN,
Deputy Secretary of State.

STATE OF NEW YORK,
Office of the Secretary of State, } ss.:

I have compared the preceding with the original Lease of The Third Avenue Railroad Company to Metropolitan Street Railway Company, filed and recorded in this office on the nineteenth day of May, 1900, and do HEREBY CERTIFY the same to be a correct transcript therefrom and of the whole thereof.

WITNESS my hand and the seal of office of the Secretary of State, at the City of Albany, this nineteenth day of May, one thousand nine hundred.

[SEAL.]

J. B. MONGIN,
Deputy Secretary of State.

Cancelled Revenue Stamp 10c.

STATE OF NEW YORK,
County of New York, } ss.:

I, WILLIAM SOHMER, Clerk of said County, and Clerk of the Supreme Court of said State for said County, do certify that I have compared the preceding with the original lease and accompanying agreement, the Third Avenue Railroad Company to Metropolitan Street Railway Company, filed May 19th, 1900, on file in my office, and that the same are correct transcripts therefrom, and the whole of such originals.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 21st day of May, 1900.

[SEAL.]

WILLIAM SOHMER,
Clerk.

Cancelled Revenue Stamp 10c.

R

Exhibit Q-3.

THE PRESIDENT OF THE UNITED STATES OF AMERICA, TO METROPOLITAN STREET RAILWAY COMPANY, NEW YORK CITY RAILWAY COMPANY, ADRIAN H. JOLINE AND DOUGLAS ROBINSON as Receivers of New York City Railway Company and ADRIAN H. JOLINE and DOUGLAS ROBINSON as Receivers of Metropolitan Street Railway Company, The Pennsylvania Steel Company and The Degnon Contracting Company, GREETING:

You are hereby commanded that you and each of you, personally appear before the Judges of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, in Equity, on the first Monday in December, A. D. 1907, wherever the said Court shall then be, to answer a bill of complaint exhibited against you in the said Court by Morton Trust Company, and do further and receive what the said Court shall have considered in that behalf. And this you are not to omit under the penalty on you and each of you, of two hundred and fifty dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, at the Borough of Manhattan, in the City of New York, on the 9th day of November, in the year of our Lord one thousand nine hundred and seven, and of the Independence of the United States of America, the one hundred and thirty-second.

JOHN A. SHIELDS,
Clerk.

BRONSON WINTHROP, ESQ.,
Solicitor for Complainant.

The defendants are required to enter appearance in the above case, in the Clerk's office of this Court, on or before the first Monday of December, 1907, or the bill will be taken *pro confesso* against them.

J. A. S.,
Clerk.

Exhibit R 3.

I hereby certify, That on the 11th day of November, 1907, at the City of New York, in my District, I served the within Subpœna in Equity upon the within-named defendant Metropolitan Street Railway Company by exhibiting to Charles E. Warren as Vice President of said Company at No. 621 Broadway, New York City, the within original, and at the same time leaving with him a copy thereof.

I hereby further certify, That on the 11th day of November, 1907, at the City of New York, in my District, I served the within Subpœna in Equity upon the within-named defendant New York City Railway Company by exhibiting to Charles E. Warren as Secretary of said Company at No. 621 Broadway, New York City, the within original, and at the same time leaving with him a copy thereof.

I hereby further certify, That on the 11th day of November, 1907, at the City of New York, in my District, I personally served the within subpœna in Equity upon the within-named defendants Adrian H. Joline and Douglas Robinson as Receivers of New York City Railway Company at No. 621 Broadway, New York City, by exhibiting to each of them the within original, and at the same time leaving with each of them a copy for each thereof.

I hereby further certify, That on the 11th day of November, 1907, at the City of New York, in my District, I personally served the within Subpœna in Equity upon the within-named defendants Adrian H. Joline and Douglas Robinson as Receivers for the Metropolitan Street Railway Company at No. 621 Broadway, New York City by exhibiting to each of them the within original, and at the same time leaving with each of them a copy for each thereof.

I hereby further certify, That on the 11th day of November, 1907, at the City of New York, in my District, I served the within Subpœna in Equity upon the

within-named Defendant The Pennsylvania Steel Company by exhibiting to John C. Jay, Jr., at No. 71 Broadway, New York City, Managing Agent of said The Pennsylvania Steel Company and duly and properly designated for the purpose of receiving service for the said The Pennsylvania Steel Company by a writing under seal and a consent both duly made and filed in the office of The Secretary of State of the State of New York the within original, and at the same time leaving with him a copy thereof.

I hereby further certify, That on the 11th day of November, 1907, at the City of New York, in my District, I served the within Subpœna in Equity upon the within-named defendant, The Degnon Contracting Company by exhibiting to N. J. Haywood as Secretary of said Company at No. 60 Wall Street, New York City the within original, and at the same time leaving with him a copy thereof.

Dated New York, November 12th, 1907.

WILLIAM HENKEL,
U. S. Marshal,
S. D. N. Y.

(ENDORSED) U. S. Circuit Court, Southern District N. Y., Filed Nov. 12, 1907, John A. Shields, Clerk.

Exhibit S.

Order Appointing Receivers Pending Suit for Foreclosure.

CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

MORTON TRUST COMPANY, Complainant, AGAINST METROPOLITAN STREET RAILWAY COMPANY, NEW YORK CITY RAILWAY COMPANY, ADRIAN H. JOLINE and DOUGLAS ROBINSON, as Receivers of New York City Railway Company, ADRIAN H. JOLINE and DOUGLAS ROBINSON, as Receivers of Metropolitan Street Railway Company, THE PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY, Defendants.	In Equity. Eq. No. 2-33.

This cause came on this day to be heard on motion of the complainant for the appointment of Receivers as prayed in the bill of foreclosure filed in this cause on November 9th, 1907.

On said bill, after hearing Bronson Winthrop, Esq., for complainant, James Byrne, Esqr., for the defendants, The Pennsylvania Steel Company and The Degnon Contracting Company, and Arthur H. Masten, Esq., for defendants Adrian H. Joline and Douglas Robinson as receivers, and notice of this application

having been duly given to Metropolitan Street Railway Company and New York City Railway Company, it is, on motion of Bronson Winthrop, Esq., solicitor for complainant,

ORDERED, ADJUDGED AND DECREED that Adrian H. Joline and Douglas Robinson, be and they hereby are, appointed under the bill of complaint in this cause, filed on November 9th, 1907, receivers of all the railroads, properties and premises, mortgaged and pledged under the mortgage dated March 21, 1902, made by the defendant Metropolitan Street Railway Company to the complainant, Morton Trust Company, as trustee, described in the bill of complaint in this cause, and of all the tolls, earnings, income, rents, issues and profits of said railroad, property and premises; that said receivers be and they hereby are authorized to run, manage, and operate the said railroads and properties, to collect the rents, income, tolls, issues and profits of said railroads and property, to exercise the authority and franchises of said defendant, and discharge its public duties, acting in all things subject to the supervision of this Court.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said receivers be and they hereby are authorized in their discretion to employ and discharge and fix the compensation of all attorneys, managers, superintendents, agents and employees, and to take such payments and disbursements as may be needful and proper in so doing; that the said receivers be and they hereby are fully authorized and empowered to institute and prosecute in their own names or in the name of said Metropolitan Street Railway Company, all such suits, as may be necessary in their judgment for the proper protection of the trust estate, and the discharge of their trust, and likewise to defend all actions instituted against them as receivers, and also to appear in and continue or defend any suits now pending in any court to which said defendant Metropolitan Street Railway Company is a party, the continuation or defense of which will, in the judgment of said receivers, be necessary for

the proper protection of the trust estate, or for the interest and rights of creditors connected therewith.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said receivers be and they are hereby authorized in their discretion from time to time out of the funds coming into their hands to pay the expenses of operating the said properties and executing their trusts, and to make such repairs to said properties and premises as in their judgment may be necessary in order safely to conduct said operation under this order.

The said receivers are hereby required to open proper books of account wherein shall be stated the earnings, expenses, receipts and disbursements of their said trust and preserve proper vouchers for all payments made by them on account thereof.

IT IS FURTHER ORDERED that the said receivers shall forthwith file in the office of the clerk of this Court the consent of the surety on the bonds of the said receivers already given in the suit of The Pennsylvania Steel Company and The Degnon Contracting Company against New York City Railway Company and Metropolitan Street Railway Company, that the said bonds shall apply and the liability of the said surety shall continue and exist also in this suit and in respect of any and all acts and transactions of the said receivers whether under their original appointment or under their appointment in this suit or in lieu thereof, that the said receivers file in this suit their joint and several bond in the sum of two hundred and fifty thousand dollars, conditioned that they will well and truly perform the duties of their office and duly account for all moneys or property which may come into their hands and abide by and perform all things which they shall be directed to do with sufficient sureties to be approved of by a judge of this Court.

AND IT IS FURTHER ORDERED that each and every of the officers, directors, agents and employees of said defendant, Metropolitan Street Railway Company, be and they are hereby required and commanded forth-

with upon demand of the said Receivers or their duly authorized agent, to turn over and deliver to said receivers or their duly constituted representative, any of the said property in his or their hands or under his or their control, provided, however, that the complainant shall be entitled to retain possession of any stocks, bonds or securities pledged under said mortgage.

And said defendant Metropolitan Street Railway Company, its officers, directors, agents and employees and all other persons claiming to act by, through or under said defendant, and all other persons whomsoever, are hereby enjoined from interfering in any way whatever with the possession or management of any part of the property over which the receivers are hereby appointed, or interfering in any way to prevent the discharge of their duties.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the suit of Morton Trust Company, complainant, against Metropolitan Street Railway Company, New York City Railway Company, Adrian H. Joline and Douglas Robinson, as receivers of New York City Railway Company, Adrian H. Joline and Douglas Robinson, as receivers of Metropolitan Street Railway Company, The Pennsylvania Steel Company and The Degnon Contracting Company, defendants, in which suit the bill of complaint was filed in this Court on October 9, 1907, be and the same hereby is consolidated with this suit and all orders and proceedings had therein are hereby made the orders and proceedings in this cause, the consolidated cause to proceed under the title of this cause, as above recited and set forth, and any party in interest may apply for further direction.

Dated New York, November 19th, 1907.

E. HENRY LACOMBE,
U. S. C. J.

Filed 19th November, 1907.

Exhibit T.

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and another,

vs.

NEW YORK CITY RAILWAY COMPANY.

Decision On Application to Make Receivers Permanent.

LACOMBE, C. J.

On September 24th, 1907, a decree was entered on bill and answer appointing temporary receivers of the property of defendant and October 7th was assigned as the date on which hearing should be had on the question whether the receivers should be continued with the usual powers exercised in such cases for operating and preserving the property, ascertaining the liabilities, marshaling the assets and distributing the proceeds. It was announced that at such hearing not only the parties but also any person in anywise interested should be heard.

Upon the hearing the Court listened to argument from Mr. Byrne counsel for complainants and Mr. Kirlin for the Metropolitan Street Railway Company, from Mr. Foster counsel for creditors in tort actions against the New York City Railway Company and against the Metropolitan one of the former having obtained judgment before appointment of receivers, and from Mr. Hawes representing tort creditors of the New York City Railway Company. The

last two gentlemen appeared with petitions, the acceptance or consideration of which the Court reserved till October 14th.

The suit at bar was brought by two general creditors of the New York City Railway Company to recover several thousand dollars for materials, and for work, labor and services. Both complainants are residents of New Jersey and defendant is a resident of New York. The bill, in the form usual in these cases, sets forth their claims and asserts that the defendant is insolvent and unable to pay its present obligations and is overwhelmed with heavy liabilities soon falling due, while its property consists of a leasehold of a system of street-railroads composed of many component roads to whom or to whose bond-holders payments are coming due, default in the payment of which may interfere with the operation of the system. Answer was put in promptly after the filing of the bill, admitting all its allegations and uniting in the application for appointment of receivers. Upon the facts thus presented to the Court the complainants were entitled, under a multitude of precedents too well-known to cite, to the appointment of receivers to marshal the property, ascertain the liabilities and distribute what assets there might be among all entitled to them according to the rules and principles of equity. The complainants, it is true, did not have judgments for their respective claims with execution returned unsatisfied, but since Hollins v. Brierfield Coal Co. 150 U. S. it has always been understood by federal judges that in the opinion of the Supreme Court such prerequisites were solely for the benefit of the defendant, and when waived by him became non-essential. It is now suggested that there was "collusion" in the proceedings resulting in decree appointing temporary receivers, and reference is made to Section 5 of the Judiciary Act of 1875 which provides that if it shall appear to the satisfaction of the Circuit Court that a suit "does not really and substantially involve a dispute or controversy properly

within the jurisdiction of said circuit court, or that the parties to said suit have been improperly or collusively made or joined either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this act, the said circuit court shall proceed no further therein, but shall dismiss the suit, etc."

A controversy is certainly set forth in the complaint and it seems to be an entirely novel proposition that it ceases to exist as a justifiable controversy as soon as defendant admits the allegations of the complaint. If that were so courts would be powerless to enter judgments for undisputed claims since they sit only to dispose of controversies. This court disposed of that question in Park v. N. Y. L. E. & W. R. R. 70 F. R. 641. There is no collusion apparent in any legal sense. It is of course manifest that complainants and defendant were entirely in accord and arranged together that the suit should be brought to the federal court and that the averments of the bill should be admitted by the answer. But there was no colorable assignment of some claim to a citizen of another state, nor any misrepresentation or distortion of facts to mislead the court. On the contrary examination of the books shows that the financial situation is precisely such as was averred in the complaint.

We have then a controversy between citizens of different states and of the statutory amount presented to a federal court of competent jurisdiction. Parties to such a controversy would seem to be entitled as of right to have such court take jurisdiction of it. It surely cannot be that the court can escape the burden of disposing of the questions it may present, however numerous or difficult they may be, merely by finding that both parties elected to seek that tribunal, and then calling such joint election "collusion" under the act of 1875. Expression of judicial opinion in harmony with these statements will be found in Brassy v. N. Y. & N. E. R. R. 19 F. R. 663; Dickerman v. Northern

Trust Co. 176 U. S. 191; and Blair v. City of Chicago, 201 U. S. 400.

It was suggested by counsel that these are state corporations, that their properties are located in the State to be operated under state laws, that the mortgages on them were made in the state, that the state has statutes and courts and machinery for conducting any receivership which may be required, that the administrative detail of conducting such a receivership will be enormous and proper attention to it most irksome and laborious; that in the state the work of supervision can be divided among seventeen judges while here there is but one to attend to it. All these may be very good reasons why the parties might have taken their controversy and all that its determination entails into the state courts; but they will not justify any court in barring its doors to a litigant who comes with a controversy which the Constitution and the laws give him the right to bring before that court.

As to the Metropolitan Street Railway Company, the reasons for allowing it to intervene as a party defendant and for extending receivership over its property were sufficiently set forth in the memorandum filed on October 1st. Having taken its entire property into possession of the court under conditions which left it powerless to recover the same for a year, the receivership left it wholly without means to meet its obligations and it seems to be clearly the duty of the court which has thus deprived it of its resources to protect it against execution while receivers handle and distribute those resources. Having possession of the *res* the court acquires jurisdiction of its owner.

A decree will therefore be entered in the usual form directing the receivers to ascertain the indebtedness and marshal the assets prosecuting vigorously any collectible claims and to apply for further instructions from time to time; meanwhile they will retain possession of the property and will operate the same.

The controlling element in the operation of the property by the receivers will be the circumstance that such

property is devoted to the public service. The traveling public are to be first considered; the service already performed by the roads must be kept up, and improved upon so far as may be. In the matter of improvements the receivers are fortunately relieved—at least in part—from the burden of devising improvements in the system, by the existence of the Public Service Commission. That body is making a careful and exhaustive investigation into all such questions and may prescribe various changes in construction, equipment or operation devised and adapted to secure better service. These directions of the Public Service Commission will be carried out by the receivers so far as the income from operating the roads will permit: whether they should also undertake to borrow money in order to complete such changes is a question which can be determined subsequently when it is known just what those changes are.

The receipts from car service will be devoted first to maintenance including all necessary repairs and replacements so as to avoid break-down at any point, and to operation, including not only employees, materials and supplies but also the adjustment of all claims arising by reason of such operation, and the obligations due to the state or municipality for percentage of gross receipts, taxes, etc., and the necessary expenses of the receivership. Next in order are certain fixed charges in the nature of rentals agreed to be paid for the use of the roads comprising the system and interest falling due on various mortgage bonds of such roads which by the terms of the leases the New York City Railway Company has covenanted to pay. Failure to pay one of these items in the case of any component road will be a default of which the owners of that road can avail, if they choose to do so. And in that case they would be entitled to take such road out of the hands of the receivers, either for operation by themselves or for lease elsewhere. It would seem to be to the public interest, because of facility of transfer, that the roads which

were being run by the City Railway when receivers were appointed should be operated as a unitary system; certainly the question is too important a one to be decided until investigation and experience shall have produced such reports from receivers as will give an accurate and complete view of the situation. For the present therefore the receivers will continue to pay such rentals and mortgage interest. This will not include the rental to the Third Avenue Railroad which will fall due the last of this month. A clause in the lease by that road provides that default in the payment of any instalment of that rental cannot be availed of for six months. Long before that time sufficient information can be gathered (and made public) by the receivers to give such enlightenment as to the whole situation as will enable the court to deal understandingly with all questions as to payment of all these items of rent and mortgage interest. Before default is made in any case (except the one above referred to and the rental due October 15th to the Metropolitan Street Railway), petition will be filed setting forth all the facts bearing on the question and asking instructions and a day will be fixed on which not only the parties to the suit, but all in any way interested (including the Public Service Commission as representative of the traveling public) will be heard as to the most equitable and wisest course to pursue. Until further order the receivers will also, if the other parties to such arrangements consent, carry out the arrangements by which the New York City Railway Company operates certain railroads not under lease, such as the Dry Dock, East Broadway and Battery R. R. and the Union Railway.

The receivers will forthwith employ an accountant of the highest standing to make an investigation of the books and papers, and also an expert engineer of like standing not heretofore connected with these roads to make a thorough examination of their physical condition, so that receivers may be able to prepare an exhaustive report as to the liabilities and assets, condition of the property and cost of operation. This report

will be prepared as soon as may be, consistently with a most thorough investigation. The sooner a comprehensive and accurate report as to the entire situation is made public on the records of this Court, the sooner we shall be in a position to determine how best to dispose of the property and relieve the receivers and the Court from the grievous burden of its conservation and operation.

As to some minor matters discussed on this hearing. Criticism has been made as to the phraseology of the decree appointing temporary receivers, which was modelled upon similar decrees in other receiverships in this Court. The Court had noted these in advance of this argument, and the decree making receivers permanent will require the approval of the Court before payment of any rentals or the borrowing of any money. The criticism as to payment of salaries seems not well founded, a fair interpretation of the decree restricts it to salaries of those whom the receivers employ to do work for them, but a change of phraseology in the final decree will make that plain. It is suggested that there should be a provision for preference of damage claims for accidents resulting from operation of the road, or at least for putting them on the same footing as operating expenses. It is premature to decide that now. When the claims are in, a time will be fixed when due notice can be given to every one and the question discussed and decided.

Upon the argument Mr. Hawes requested the court to make an announcement as to claims for damages for personal injuries sustained in the operation of the road. The request is a proper one and will be complied with. All pending suits against the New York City Railway Company or the Metropolitan Street Railway Company which were begun before receivers were appointed may be prosecuted to judgment, thus liquidating the claim. These claims are against the property of one or other of the corporations now held by receivers and will rank with all other claims of general creditors of such corporation unless upon the

argument heretofore referred to they may be accorded some general or qualified preference. It will be advisable for all such claimants, whose suits are not yet tried to file a claim with the receivers stating that it is in litigation and when there has been a liquidation of the amount by verdict and judgment or by compromise approved by this court, they can file an amended claim. The master to whom all claims will be referred, will accept this liquidation unless some extremely exceptional circumstances call for some revision.

As to claims for damages resulting from some accident before receivers were appointed, but not yet in suit. These are claims against the property of the defendant which may be filed with the receivers and may go to the master for adjustment. In any case, however, if plaintiff wishes a jury trial the decree in no way prevents his bringing suit against the company and liquidating the amount by judgment as if the suit had been begun before receivership. When liquidated it will rank with claims already in suit.

For damages resulting from the operation of the road by the receivers, the injured party may, of course, sue the receivers in any court he pleases, without asking leave from any one.

Oct. 8, 1907.

(Endorsed:) Circuit Court of the United States, for the Southern District of New York.—The Pennsylvania Steel Company and another vs. New York City Railway Company. Opinion, Lacombe, C. J.—U. S. Circuit Court, Southern District of New York, Filed Oct. 8, 1907. John A. Shields, Clerk.

Exhibit U.

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and another

vs.

THE NEW YORK CITY RAILWAY COMPANY.

Decision on Application of Metropolitan Street Railway Company to Be Made a Party Defendant.

LACOMBE, C. J.

The Receivers are now in possession of the earning property of petitioner, and under the terms of the lease petitioner can avail of no default in payment of amounts stipulated within a year from such default. The property is an intricate combination of various roads, one or more of which might be cut out of the system by failure to pay the interest on some underlying mortgage, or some rental due the constituent road. It is of vital interest to petitioner that the property be kept intact. Under these circumstances there can be no doubt that a proper case for intervention is made out. The only question is whether petitioner should be brought in as a party plaintiff or a party defendant. The petition shows that by reason of the fact that all its earning property is held by receivers, who, it is apprehended, will not pay certain sums, which the lessee stipulated to pay to the lessor, the latter is without means to meet its obligations, being deprived of its income and unable, while its property is held

by receivers for an indefinite period, to borrow on such property. Whatever may be the actual value of the property of petitioner it appears to be in a condition of temporary insolvency and should come in as a party defendant turning all its property over to receivers to be marshalled and its obligations paid. Central Trust Co. v. Wabash R. W., 29 F. R., 618.

Such a disposition of the matter seems to be greatly to the public interest. It is hardly to be supposed that any substantial sum could be borrowed on receivers' certificates bottomed only on a lessee's interest in a leasehold, which might be terminated in a year for failure to pay all that was stipulated. On the other hand when receivers are in control of all the interests of both lessor and lessee it may reasonably be expected (unless indeed the very growth of the system has reduced its value to a greater extent than is generally supposed) that they will be able, should occasion arise, to obtain the money necessary to pay for such replacements and improvements as may be required to secure efficient service.

The interests of lessor and lessee are different and in a sense diverse. Nevertheless it seems practical to adjust all questions in a single receivership. In this circuit it is not the practice for receivers to concern themselves with plans for re-organization. Fowler v. Jarvis Conklin, 63 F. R., 888. Their sole functions are to hold the property intact operating it as efficiently for the public service as their resources will permit to ascertain the liabilities; to marshal the assets and eventually, unless in the meantime some entirely solvent concern able to liquidate all obligations and succeeding to owner's and lessee's interests shall appear to take it off their hands, to sell it to the best advantage and apply the proceeds ratably to the payment of the liabilities. It is thought that the present receivers can do this as holders of the interests of both lessor and lessee. Should future experience seem to indicate that a separate trustee for one of the

parties is required, some way to meet that difficulty will be found.

With assent of the sureties proper extension of the receivers' bonds should be had so as to cover the new situation.

Oct. 1, 1907.

E. HENRY LACOMBE.
U. S. C. J.

Filed. Oct. 1, 1907.

Exhibit V.

Decision on Petition of Joseph Konrad and Others for Leave to Intervene.

U. S. CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

PENNSYLVANIA STEEL COMPANY and another

vs.

NEW YORK CITY RAILWAY COMPANY and another.

Petition of KONRAD and GALLAGHER and another.

LACOMBE, Circuit Judge.

Examination of the numerous authorities cited indicates that the propositions presented upon these applications are substantially those already discussed in the memoranda heretofore filed in this cause. The petitions and affidavits may be filed and the prayers for leave to intervene and for further relief are denied. Order to be settled on notice, and notice may be given for Friday afternoon.

October 28th, 1907.

Filed 28th October, 1907.

Exhibit W.

Petition of Receivers for Authority to Make Expenditures for Improvements, Betterments, Etc.

UNITED STATES CIRCUIT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY,

Complainants,

AGAINST

NEW YORK CITY RAILWAY COMPANY,

Defendant.

TO THE HONORABLE THE JUDGES OF THE SAID COURT:

The petition of Adrian H. Joline and Douglas Robinson, Receivers duly appointed herein in the first instance by order made and filed on the 24th day of September, 1907, and continued as Permanent Receivers by order made and filed on the 9th day of October, 1907, respectfully shows to the Court as follows:

FIRST. In April of this year, as your petitioners are informed, the operating equipment of the defendant corporation was seriously impaired through the destruction by fire of its car house at 146th Street and Lenox Avenue, by which over 300 cars were lost, including a number of snow-sweepers. On the 9th instant a fire occurred in the car house of the Dry

Dock, East Broadway and Battery Railroad Company, in which there were destroyed about 80 cars belonging to the defendant corporation or its leased lines. In order to afford the same service to the public as heretofore it is absolutely necessary, as your petitioners are informed and believe, that new equipment in place of that so destroyed should be procured forthwith. Thus far no special inconvenience has been occasioned to the travelling public for the reason that most of the cars destroyed were closed or box cars, and during the summer time when open cars are largely in use their loss did not affect the operation of the road. As it is customary, however, to withdraw the open cars from service about November 1st, it is imperative as cold weather approaches that the new closed cars be made ready for service at the earliest day practicable. A number of such cars were ordered by the defendant Company some time before the receivership, but only about 30 had been delivered up to the date when your petitioners were appointed.

Your petitioners are now advised that they can obtain immediately from the J. G. Brill Company 9 closed cars of ordinary type, which are ready for delivery, and by placing an order at once, they can also obtain 80 cars to take the place of those destroyed in the recent fire, and that the same will be ready for service on or before January 15th, proximo. It is also possible to obtain 155 cars of special type and of large capacity, to be delivered from time to time before the close of the year. In connection with said 155 cars it will be necessary to purchase various electrical apparatus and equipment which, as your petitioners are advised, can be procured from the General Electric Company, if ordered forthwith, in time for installation of the car bodies delivered. The cost of said 9 cars will approximate about $20,000., and said 80 cars can probably be purchased for about $236,000. complete. The cost of said 155 cars of special type will be approximately, $540,000., and of the necessary electrical equipment, including the air brakes, about

$430,000. Incidental to their installation will be additional expenses for registers, heaters, fenders, handbrakes, wheels, etc., aggregating about $88,000.

To replace the snow-sweepers destroyed in the fire of April last, your petitioners find that they can procure 22 new sweepers at an approximate cost of $37,000. In addition thereto it is desirable that there should be purchased at least 10 scraping cars, so called, at approximately $11,000, to be used for the purpose of removing snow and ice from the conduits of the electric system of the defendant Company. Such cars have been found to work satisfactorily and are essential to the successful operation of the system during the winter months. Under severe weather conditions, it is impossible to operate the road satisfactorily without them, and, as your petitioners are advised, the experience of the last winter has shown that the supply now on hand is insufficient. The prices of the cars and equipment above described are, according to the best knowledge and information of your petitioners, fair and reasonable, and it is the judgment of your petitioners that the necessities of the system imperatively require that they should be authorized at once to make contracts for the purchase thereof.

SECOND. Your petitioner further shows that, in order to properly care for the new cars above described, it is, in their judgment, essential that they should be authorized to replace the car house at 146th Street and Lenox Avenue. At this point the principal repair and overhauling shops of defendant Company were located, and its operations have been seriously crippled since the fire of last April because of the lack of adequate facilities for maintaining the equipment. This is particularly true of the trucks of the cars, the inspection and repair of which was carried on at 146th Street. Because of inability to do this work satisfactorily or even to make thorough inspection the defendant Company, as your petitioners are advised, was obliged to keep cars in service which were in a defective condi-

tion, causing considerable complaint from the public on the ground of noise incident to their operation. As a result of the burning of the car houses at 146th Street and at 86th Street it has been necessary for some time, through lack of proper storage facilities, to leave a large number of cars on the streets over night. This renders it difficult to conduct a proper inspection, requires additional men to watch the cars and renders them liable to deterioration from exposure to the weather. It is, therefore, imperative, in the judgment of your petitioners, that the 146th Street car house should be rebuilt as soon as possible. The expense of this, as your petitioners are advised, will be approximately the sum of $665,000.

THIRD. In November, 1906, as your petitioners are advised, the defendant Company announced to its employees its intention of equipping all cars of its system of vestibules for the better protection of motormen from severe weather. About 700 of the closed cars, or approximately one-third of the total number in use, have been equipped with this protecting device. To equip the remainder will require an expenditure of about $70,000, including therein not only such part as is done by outside contract but the labor and material supplied in the Company's shops. In the judgment of your petitioners, it is desirable, not only in view of the announcement heretofore made to the employees but from the standpoint of the public, that they should be authorized to incur the expense necessary to complete the equipment of all the closed cars with such vestibule.

FOURTH. Your petitioners upon their appointment found in progress the installation of a conduit electric system on First Avenue, from 59th Street to 125th Street, the completion of which will involve an expenditure of approximately $275,000. Of this amount over $100,000. will be required to defray the expense

of paving the street. This repaving work must necessarily be performed in order to restore the street to its original condition, irrespective of whether or not the track construction is completed. The question is thus presented as to whether approximately $175,000. should be expended in order to be able to operate electric cars on First Avenue between the streets above stated. If not operated electrically, the road at this point must be operated by horse power, which would require the expenditure of at least $50,000. in order to procure a sufficient number of horses for the purpose, in addition to providing proper stable facilities. As your petitioners are advised, the cost of operating horse car lines is much greater than that of electrical operation, and the better transportation facilities afforded by electrical power would, according to past experience, tend to largely increase the receipts per car mile. In the judgment of your petitioners, it is desirable that they should be authorized to make contracts for completing the installation of the section between 59th and 125th Streets on First Avenue without delay.

FIFTH. Your petitioners further show that, as they are informed and believe, the experience of the defendant during the last two winters shows that there has been considerable difficulty in supplying sufficient power to operate all of its cars, particularly when the condition of the streets was such as to require more than ordinary power, and it was at the same time necessary to supply additional current for the purpose of heating the cars. Upon a number of cars it was found necessary to turn off the heat, thereby occasioning much discomfort to passengers and giving rise to widespread criticism. In order to guard against accident, disabling a sub-station or part of its equipment, it is essential that new sub-station equipment should be installed so as to insure the sufficiency of the power at all points. The estimated cost of such equipment is

$100,000, and, in the judgment of your petitioners, it is desirable that they should be authorized to contract therefor.

SIXTH. Your petitioners further show that, as they are informed, the City of New York is now engaged in constructing an underground terminus at the westerly end of the Williamsburg Bridge for the purpose of furnishing terminus facilities for the operation of the Brooklyn elevated and surface cars. This work will involve a change in the grade of the street at that point and a consequent necessity for changing the grade of the tracks of the defendant Company for a considerable distance on Delancy and Clinton Streets. Your petitioners have been notified by the Department of Bridges of the City of New York that such department be definitely assured forthwith as to whether or not the work of changing the grade of the tracks will be promptly undertaken by your petitioners, as Receivers, and that failing to receive such assurance, said Department will undertake the work of changing the grade of said tracks, charging the expenses of the same to the defendant Company. Your petitioners are advised that if the work of changing the grade of the tracks is undertaken by the engineering force under their charge as Receivers, the cost will not exceed $70,000, owing to the facilities at the disposal of the defendant Company for performing work of this character, whereas, if the said work is done by the City, the expense will be considerably greater and the running of cars more seriously interfered with. In the judgment of your petitioners it is desirable that they should be authorized to carry out this work and so advise the City officials at the earliest possible date.

SEVENTH. Your petitioners further show that, in order that the various car barns under their charge should have proper protection against fire, it is essential that automatic sprinkler equipment should be installed with as little delay as possible. The risk of

fire in these structures is peculiarly great, owing to the nature of the equipment stored therein, and it is impossible to obtain insurance on the buildings and contents to an amount which will even approximately reimburse the owners in the event of loss. At present your petitioners are unable to procure insurance for more than 75 per cent. of the amount which should be carried. As your petitioners are advised, it will not be possible to retain even this amount unless sprinkler equipments are installed and, as matter of fact, cancellations of outstanding policies are being received almost daily. In addition to this there should also be performed other work necessarily appurtenant thereto, such as the fireproofing of floors, the installation of fire gongs and other apparatus for the purpose of protection, which are insisted upon by the insurance companies. Your petitioners desire to make contracts forthwith for sprinkler equipment for the various car houses, the approximate cost of which will be respectively as follows:

96th and 97th Streets, 2nd and 1st Avenues	$133,737.00
129th Street and 3rd Avenue	72,267.00
129th Street and Amsterdam Avenue	40,963.00
99th Street and Lexington Avenue	103,630.00
65th Street and 3rd Avenue	79,750.00
218th Street and 9th Avenue	41,158.00
42nd Street and 13th Avenue	21,228.00
	$492,733.00

In addition to the above and incidental thereto there will be expense for sundry items, including fire-extinguishers, re-arrangement of lighting circuits, additional lighting circuits and automatic circuit breakers for car house tracks, handling and storage of oil in six buildings, auxiliary fire alarm system, supervision of sprinkler installation and of fire protection apparatus and miscellaneous expenses, amounting in the aggregate to approximately $128,000.

WHEREFORE, your petitioners respectfully ask the authority of the Court to make the expenditures above described or its instructions in the premises.

All of which is respectfully submitted.

Dated October 19th, 1907.

(signed) ADRIAN H. JOLINE,
DOUGLAS ROBINSON,
Receivers.

MASTEN & NICHOLS,
Counsel.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:

ADRIAN H. JOLINE, one of the Receivers of the New York City Railway Company, being duly sworn, deposes and says:

That he is one of the petitioners above named and that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

ADRIAN H. JOLINE.

Sworn to before me this 19th day of October, 1907.

JOHN A. DUNN,
[SEAL.] Notary Public,
N. Y. Co.

Filed 19th Oct., 1907.

Exhibit X.

Order Granting Petition of Receivers for Authority to Make Expenditures for Betterments.

CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY,

Plaintiffs,

AGAINST

NEW YORK CITY RAILWAY COMPANY,

Defendant.

Now on the 19th day of October, 1907, come Adrian H. Joline and Douglas Robinson, the Receivers duly appointed herein by order made and filed on the 24th day of September, 1907, and continued as permanent Receivers by order made and filed on the 9th day of October, 1907, and present their petition asking the authority of this Court to make certain expenditures for betterments, replacement and equipment, and requesting the instructions of the Court in that regard.

Whereupon the Court having duly considered the said petition and being fully advised in the premises and it appearing to the satisfaction of the Court that

the expenditures so recommended by the Receivers are necessary to make the roads under their charge efficient, to place their equipment in proper condition, to adequately protect the same and to perfect the service of said roads, now, on motion of Masten & Nichols, solicitors for the said Receivers, it is

ORDERED, that the said Receivers, Adrian H. Joline and Douglas Robinson, be and they are hereby authorized and empowered to make the said expenditures set forth in said petition, and to that end said Receivers are hereby authorized to enter into such contracts and agreements as may be necessary therefor or incidental thereto, such expenditures being summarized as follows and the amounts stated being approximate:

Nine (9) closed cars (now ready for delivery)	$ 20,000
Eighty (80) closed cars (not yet ready for shipment)	236,000
One hundred and fifty-five (155) cars of a special type	540,000
Electrical equipment for same	430,000
The equipment for the said cars including registers, etc.	88,000
Twenty-two (22) snow-sweepers	37,000
Ten (10) scraping cars	11,000
Rebuilding of 146th Street and Lenox Avenue car house	665,000
Vestibule equipment for about fourteen hundred (1400) closed cars	70,000
Installation of conduit electric system from 59th Street to 125th Street on First Avenue	275,000
New Sub-Station equipment	100,000
Change of Grade of tracks on Delancy and Clinton Streets	70,000

Automatic Sprinkler Equipment for Car Houses, as follows :

96th Street and 97th Street, Second and First Avenues	$133,737	
129th Street and Third Avenue	72,267	
129th Street and Amsterdam Avenue	40,963	
99th Street and Lexington Avenue	103,630	
65th Street and Third Avenue	79,750	
218th Street and Ninth Avenue	41,158	
42nd Street and Thirteenth Avenue	21,228	
		492,733
Sundry Items, including Fire-Extinguishers, re-arrangement of lighting circuits, etc.		128,000

Dated New York, October 29th, 1907.
Filed 29th October, 1907.

Office Supreme Court, U. S.
FILED.
DEC 2 1907
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1907.

No. 12.

(ORIGINAL)

IN THE MATTER

OF

THE APPLICATION OF JOSEPH KONRAD, INDIVIDUALLY AND AS ADMINISTRATOR OF PAUL PLANOVSKY, DECEASED, FOR A WRIT OF MANDAMUS AGAINST THE HONORABLE E. HENRY LACOMBE, CIRCUIT JUDGE OF THE UNITED STATES FOR THE SECOND CIRCUIT, AND AGAINST THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Return of E. Henry Lacombe, Circuit Judge of the United States for the Second Circuit, and the Circuit Court of the United States for the Southern District of New York.

C. G. Burgoyne, Walker and Centre Streets, N. Y.

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Supreme Court of the United States.

IN THE MATTER

OF

The application of JOSEPH KONRAD, individually and as Administrator of Paul Planovsky, Deceased, for a Writ of Mandamus against the Honorable E. Henry Lacombe, Circuit Judge of the United States for the Second Circuit, and against the Circuit Court of the United States for the Southern District of New York.

Return of E. Henry Lacombe, Circuit Judge of the United States for the Second Circuit, and the Circuit Court of the United States for the Southern District of New York.

TO THE HONORABLE MELVILLE W. FULLER, CHIEF JUSTICE OF THE UNITED STATES, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

In compliance with the order to show cause why the prayer of petitioners should not be granted, issued by this Honorable Court on November 18, 1907, and served November 21, 1907, the above named Respondents do hereby respectfully present that:

On September 24, 1907, a bill in equity was filed in the United States Circuit Court, Southern District of New York, by The Pennsylvania Steel Company and

The Degnon Contracting Company, citizens and residents respectively of the States of Pennsylvania and New Jersey, against the New York City Railway Company, a citizen and resident of the State of New York, alleging the insolvency of the defendant and praying for the marshaling and administration of its assets; a subpœna was issued thereupon and service was made upon the defendant. An answer to the bill, admitting its allegations, was there after on the same day filed in said court and the bill and answer were presented to the respondent E. HENRY LACOMBE then holding said court. Copies of the bill, the subpœna, the Marshal's return, and the answer thereto are hereto annexed marked Exhibits A, A-2, A-3, and B. Counsel for the respective parties appeared and upon motion by complainants, not opposed but assented to by defendant, a decree appointing temporary receivers of the New York City Railway Company was signed and entered, a copy of which is hereto annexed marked Exhibit C. The receivers, Adrian H. Joline and Douglas Robinson, immediately qualified and entered upon the performance of their duties as receivers in accordance with the terms of said decree, Exhibit C. Subsequently, on October 1, 1907, a petition was presented by the Metropolitan Street Railway Company, a copy of which petition is hereunto annexed marked Exhibit D. Attached to this petition, as Schedule A, was a copy of a lease between the Metropolitan Street Railway Company, as lessor, and the New York City Railway Company, which then bore the name of Interurban Street Railway Company, as lessee; and attached to said petition as Schedule B, was a copy of the mortgage of the Metropolitan Street Railway Company dated March 21, 1902, executed to the Morton Trust Company as trustee. On the same day (October 1), on notice to all the parties in said action, an order was made and entered granting the prayer of said petition, a copy of which is hereto annexed marked Exhibit E.

On October 8, the Morton Trust Company, trustee

under the mortgage of the Metropolitan Street Railway Company dated March 21, 1902, filed a petition for leave to make the receivers parties to the suit it was about to begin, which petition was granted. (Exhibits F and G.) Thereupon, on October 9, a bill of complaint was filed by said Morton Trust Company. Said bill and the exhibits therein referred to are collectively marked Exhibit H. A subpœna was issued in said suit, and service of the same was made on October 9. Copies of the subpœna and the Marshal's return are hereto annexed, marked Exhibits H-2 and H-3. A decretal order was made on said bill (Exhibit J) appointing said Joline and Robinson as receivers of the property covered by said mortgage.

On October 7 upon return of the order to show cause (contained in the decree appointing temporary receivers dated September 24, 1907) why the receivership should not be continued during the pendency of the suit, a public hearing was had and thereafter on October 9, 1907, a decree continuing said Joline and Robinson as receivers during the pendency of the suit was made and entered (Exhibit K) which was subsequently, on October 15, 1907, amended as to its recitals by an order (Exhibit L).

On October 25 a decretal order adjudicating the insolvency of the New York City Railway Company and appointing a Special Master to take proof of claims and directing public notice to be given of the time within which claims should be presented was made and filed (Exhibit M).

Petitions for leave to intervene, etc., were presented and argument had upon them on October 14. Copies of the petitions, marked Exhibits N-2 and N-3 and N-4 and of certain affidavits filed in opposition, marked Exhibits N-5, N-6 and N-7 are annexed.

The Court heard the counsel of the parties fully on all the questions raised thereby and decided the same and on November 6, in the exercise of its jurisdiction and official discretion made orders denying such petitions (Exhibits N and O).

On November 9 a decretal order adjudicating the insolvency of the Metropolitan Street Railway Company, appointing a Special Master to take proof of claims, and directing public notice to be given of the time within which claims should be presented was made and filed. (Exhibit P.)

On November 9 the Morton Trust Company presented to the Court a petition (Exhibit Q) stating that it was about to file a bill for the foreclosure of the mortgage made by the Metropolitan Street Railway Company to the petitioner dated March 21, 1902, and praying leave to make Adrian H. Joline and Douglas Robinson as receivers of the New York City Railway Company and as receivers of the Metropolitan Street Railway Company, then in possession of the property embraced in the mortgage, parties defendant to said suit. On the same day the prayer of said petition was granted (Exhibit Q–2). Pursuant to said leave on the same day a bill of foreclosure was filed by the Morton Trust Company. Said bill and the exhibits therein referred to are hereto annexed, collectively marked Exhibit R. A subpœna was issued on said bill and service made thereof. Copies of the subpœna and the Marshal's return are annexed as Exhibit R–2 and R–3, respectively.

On November 19, upon motion, a decretal order (Exhibit S) was made appointing said Joline and Robinson under the bill of complaint to foreclose the mortgage dated March 21, 1902 receivers of the mortgaged premises and consolidating the two suits in which the Morton Trust Company is complainant.

Reasons for the making of the decrees or orders Exhibits C, E, K, N, and O appear in the three memoranda filed respectively on October 8, October 1, and October 28. Copies are annexed, marked Exhibits T, U and V. The other orders and decrees were entered because in the opinion of the Court the papers on which they were based, together with the earlier proceedings in the cause, indicated that such orders and decrees should be entered.

All orders and decrees were made upon due notice

or upon the appearance of the parties, and in the exercise of the jurisdiction and official discretion of the respondents.

This return includes all papers in the case relating to any motion, petition, or application of Joseph Konrad, Daniel Gallagher, or Francis S. Reisenberg, and is confined to the record, in accordance with the respondent's construction of the purpose ond intention of the order to show cause.

The receivers have duly qualified in accordance with the different orders appointing them or extending their receivership.

Since the appointment of the receivers they have incurred many obligations under contracts for necessary work, labor and materials, for supplies, repairs, replacements of property destroyed by fire, and for improvements necessary to enable them to comply with requirements of the State and local authorities as to the operation of the road. Annexed hereto is a petition of the receivers for authority to make expenditures, marked Exhibit W, and an order granting the prayer of the petition, marked Exhibit X. They have also incurred liabilities by reason of the fact that accidents have occurred during operation of the cars, in many instances through some negligence of their employees, which have resulted in personal injuries for which claims for damages have been or will be made.

Messrs. Byrne & Cutcheon, solicitors for the complainants in the original suit, and J. Parker Kirlin, Esq., solicitor for the Metropolitan Street Railway Company, having desired to be heard, in order to secure them such opportunity, the respondents hereby designate them or such associate counsel as they may select, to present this return and to file such brief and make such argument as may be required on the order to show cause.

Nov. 30th, 1907.

E. Henry Lacombe,
U. S. Circuit Judge.

[Seal U. S. Circuit Court.]

Exhibit A.

Bill of Complaint.

In the Circuit Court of the United States

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY, Complainants, AGAINST NEW YORK CITY RAILWAY COMPANY, Defendant.	In Equity.

TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF NEW YORK;

Your orators, The Pennsylvania Steel Company, a corporation duly organized and existing under the laws of the State of Pennsylvania, and a citizen of said State, and The Degnon Contracting Company, a corporation duly organized and existing under the laws of the State of New Jersey and a citizen of said State, bring this their bill of complaint on their behalf and on behalf of all other creditors of New York City Railway Company, defendant, who may hereafter join in the prosecution of this suit against the New York City Railway Company, a corporation organized and existing under and by virtue of the laws of the State of New York and a citizen of said State, resident in the

Southern District of New York, and thereupon your orator alleges as follows:

FIRST. That your orator, The Pennsylvania Steel Company, is a corporation duly organized and existing under the laws of the State of Pennsylvania and a citizen and resident of said State, and your orator, The Degnon Contracting Company is a corporation duly organized and existing under the laws of the State of New Jersey and a citizen and resident of said State.

SECOND. On information and belief that the defendant was at all the times hereinafter mentioned and is a corporation duly organized and existing under and by virtue of the laws of the State of New York and a citizen of said State, having its principal office in the City of New York, and a resident of the Southern District of New York.

THIRD. On information and belief that the defendant, New York City Railway Company, was organized under the laws of the State of New York on or about the 25th day of November, 1901; that the defendant owns and operates certain lines of street railway in the Borough of the Bronx, in the City of New York, and also is in possession of and is operating as hereinafter set forth the system of street railways of the Metropolitan Street Railway Company in said city; that said defendant through ownership of capital stock also controls other companies owning other lines of street railway in said city; that the total mileage of the system of the defendant, including the mileage of leased lines and lines of companies controlled through ownership of stock, is upwards of five hundred (500) miles, and said system of the defendant embraces practically the entire surface traction system in the Borough of Manhattan and in the Borough of the Bronx, in said City of New York; that appurtenant to the railroads of said defendant are various rights, easements and privileges

growing out of the same and connected therewith and the defendant has other franchises and easements and holds valuable contracts, including contracts for mail and express service.

FOURTH. On information and belief, that the defendant is in possession of and operates the main lines of its system under a lease bearing date the 21st day of March, 1902, made to it by said Metropolitan Street Railway Company, by which said lease said lessor leased to the defendant the entire system of the lessor then owned or thereafter to be acquired by said lessor during the term of said lease, for the term of nine hundred and ninety-nine years from the date of said lease; that the system of said lessor so leased to the defendant embraced not only the lines owned by said Metropolitan Street Railway Company, but also all lines leased to said lessor, embracing among others the lines of the Third Avenue Railroad Company, which, including as well all lines at the time owned as all subsequent additions, said Third Avenue Railroad Company, by indenture of lease, bearing date the 13th day of April, 1900, had demised to said Metropolitan Street Railway Company for the term of nine hundred and ninety-nine years from the date of said indenture of lease; that in addition to said lines of said Third Avenue Railroad Company, said lease made by the Metropolitan Street Railway Company to the defendant embraces the lines of the following companies theretofore leased to said Metropolitan Street Railway Company or its predecessors, by various indentures of lease:

Broadway and Seventh Avenue Railroad Company.

Sixth Avenue Railroad Company.

Ninth Avenue Railroad Company.

Twenty-third Street Railway Company.

Bleecker Street & Fulton Ferry Railroad Company.

Central Park, North and East River Railroad Company,

Forty-second Street and Grand Street Ferry Railroad Company,

Eighth Avenue Railroad Company,

New York and Harlem Railroad Company (City Line),

Second Avenue Railroad Company,

Central Crosstown Railroad Company,

Christopher and Tenth Street Railroad Company,

and that by said lease, made by said Metropolitan Street Railway Company to the defendant, it is among other things provided that in case the defendant, said lessee, shall fail to pay the rent provided for in said lease as the same should accrue, and any such default should continue for the period of twelve months after written demand, and notice, the leasehold estate thereby created might at the option of said lessor be terminated.

FIFTH. On information and belief, that said defendant has an authorized capital stock of Twenty million dollars, of which there has been issued and is outstanding stock to the amount of Thirteen million dollars; that the lines of railway owned by said defendant are not subject to mortgage, but the lines embraced in its system are subject to the following mortgage indebtedness, which is now outstanding, the refunding mortgage of said Metropolitan Street Railway Company being, and being expressed to be, subject to said lease of February 14, 1902, made by said last named Railway Company to the defendant:

	Amount Outstanding.
Metropolitan Street Railway Company, General and Collateral Trust Mortgage	$12,500,000
Metropolitan Crosstown Railway Company, First Mortgage	600,000
Lexington Avenue and Pavonia Ferry Railroad Company, First Mortgage	5,000,000
Columbus and Ninth Avenue Railroad Company, First Mortgage	3,000,000
South Ferry Railroad Company, First Mortgage	350,000
Broadway Surface Railroad Company, First Mortgage	1,500,000
Metropolitan Street Railway Company, Refunding Mortgage	16,604,000
Fulton Street Railroad Company, First Mortgage	500,000
Thirty-fourth Street Crosstown Railway Co., First Mortgage	1,000,000
Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, First Mortgage	1,500,000
Union Railway Company of New York, First Mortgage	2,000,000
Yonkers Railroad Company, First Mortgage	1,000,000
Westchester Electric Railroad Co., First Mortgage	500,000
Tarrytown, White Plains and Mamaroneck Railway Company, First Mortgage	300,000
Southern Boulevard Railroad Company	250,000
Dry Dock, East Broadway and Battery Railroad Company, General Mortgage	950,000
Dry Dock, East Broadway and Battery Railroad Company, Certificates of Indebtedness	1,100,000
Forty-second St. Manhattanville & St. N. Av. Ry. Co., First Mortgage	1,200,000

	Amount Outstanding.
Forty-second St., Manhattanville & St. N. Av. Ry. Co., Second Mortgage Income	160,000
Broadway & 7th Ave. Railroad Co., 2d Mortgage	500,000
Broadway & 7th Ave. Railroad Co., 1st Consolidated Mortgage	7,650,000
Central Crosstown Railroad Co., 1st Mortgage	250,000
Central Crosstown Railroad Co., 1st Consolidated Mortgage (deposited with Morton Trust Co., as collateral security for the three-year notes of said Railroad Company, to the face amount of $2,250,000)	2,490,000
The Third Avenue Railroad Company, 1st Mortgage	5,000,000
The Third Avenue Railroad Company, First Consolidated Mortgage	37,560,000
Bleeker St. and Fulton Ferry Railroad Co., 1st Mortgage	700,000
Second Ave. Railroad Company, First Mortgage	1,280,000
Second Avenue Railroad Company, Debenture Bonds	89,000
Second Avenue Railroad Company, First Consolidated Mortgage	5,631,000
Christopher and Tenth Street Railroad Co., 1st Mortgage	210,000

That your orators are informed and believe that failure to meet the interest on such mortgage indebtedness, as such interest matures, will operate also as a default under the mortgage securing the indebtedness the interest on which shall so become in default, and render such mortgage enforceable.

SIXTH. On information and belief that the defendant, since entering into possession as aforesaid under said

lease from said Metropolitan Street Railway Company, has operated all the lines owned and leased by it as parts of a single system, constituting routes over different lines or parts of lines, connecting separated lines over parts of intermediate leased lines or lines of controlled companies, interchanging equipment among the various lines and furnishing equipment as might be required to meet from time to time the varying requirements of particular lines, supplying power and using power houses, car barns and stations as seemed best for the effective and economical operation of the system as a whole, and also establishing a system of transfers between various lines and routes; that the defendant owns equipment to a substantial amount, which has been used over the system as varying requirements of operation made necessary, without assignment to any particular line or lines; and your orators are informed and believe that many of the leased lines in defendant's system are without adequate equipment of their own; and your orators are further informed and believe that in many cases the motive power employed on leased lines or lines of controlled companies has been changed to electricity without supplying said lines with independent power houses or other independent sources of supply of power, leaving such lines dependent for power on other lines of the system.

SEVENTH. Your orator The Pennsylvania Steel Company alleges positively and your orator The Degnon Contracting Company on information and belief that the defendant is indebted to your orator The Pennsylvania Steel Company in the sum of Thirty-six thousand eight hundred and thirty-one and $\frac{38}{100}$ dollars ($36,831.38) for rails and track material furnished and supplied by your orator The Pennsylvania Steel Company to the defendant, at the request of the defendant, and for which the defendant agreed to pay your orator The Pennsylvania Steel Company said sum of Thirty-six thousand eight hundred and thirty-one and 38/100 dollars ($36,831.38)

and payment of said sum has been duly demanded by your orator The Pennsylvania Steel Company from the defendant and payment thereof refused and the same is now wholly due and unpaid; that said rails and track material were so supplied to the defendant for the purposes of the operation of its street railway system and to enable the defendant to comply with and fulfill the duty towards the public which the defendant as well as the respective lessors of the defendant, owed to the public, and to discharge its and their obligations respectively under the franchises for the operation of their respective lines, and were used for the purposes aforesaid; that your orator The Degnon Contracting Company alleges positively, and your orator the Pennsylvania Steel Company on information and belief, that the defendant is indebted to your orator The Degnon Contracting Company in the sum of Eleven thousand one hundred and seventy-three dollars and twenty-seven cents ($11,173.27) for work and labor done for the defendant at the request of the defendant, for which the defendant agreed to pay your orator The Degnon Contracting Company said sum of $11,173.27 and that payment of said sum has been duly demanded by your said orator from the defendant and payment thereof refused and the same is now wholly due and unpaid.

EIGHTH. That your orators are informed and believe that since entering into possession of the premises demised under said lease made by said Metropolitan Street Railway Company, the defendant has expended large sums, aggregating more than Twenty million dollars, in making extensions, improvements and additions, and other capital expenditures, to and upon lines of its system including its leased lines and lines of controlled companies and has so expended large amounts in the electrification of various lines theretofore operated by horses, and that said expenditure has greatly benefited such lines of railroad and enhanced the value of said leased properties, and properties of controlled

companies ; but that the expenditures required for that purpose have exceeded the resources of the defendant ; that the defendant has recently entered into contracts for electrification, which are now in course of performance ; that the ultimate liability of the defendant under such contracts is upwards of Four million dollars ; that the defendant is and will be unable to meet such liability, and that notwithstanding large amounts have been expended in the purchase of materials and otherwise in connection with such electrification, such work must be suspended, thereby causing heavy loss to the defendant and subjecting the defendant to heavy liabilities ; that the defendant has been required and will be required to make large expenditures for the maintenance and repair of its system and among other things has entered into contracts for new equipment to replace equipment destroyed, or otherwise requisite for the operation of its system ; that said equipment will shortly be deliverable and that the defendant will be unable to pay therefor, although immediately necessary for the operation of its lines ; that in the course of the operation of its lines, numerous accidents have occurred, in respect of which suits have been brought and are now pending, and that said suits to the number of several thousand are now upon the calendars of the Courts awaiting trial, and that the defendant will be without means to meet judgments recovered in said suits.

NINTH. That your orators are informed by the officers of the defendant and believe that the defendant has outstanding floating indebtedness for materials, equipment, taxes and supplies furnished, to the amount of upwards of Two million dollars ; that said floating indebtedness is now overdue ; that the defendant is unable to pay the same, and that the holders thereof are pressing for payment thereof ; that the defendant also has outstanding obligations to the amount of several million dollars, the payment of which is secured by obligations of various companies controlled by the

defendant or owning leased lines embraced in the defendant's system ; that said obligations are payable on demand and that the defendant is without means to pay such obligations, or under existing financial conditions to effect new loans against such collateral and is without other collateral available for such purpose. Your orators are informed and believe that the defendant has no means at hand with which to meet its immediate pressing needs in operating its system ; that many of the creditors to whom the defendant is liable are pressing the defendant for immediate payment, and that some of said creditors may bring suits in respect of their said claims, and may levy execution on the lines of railroad owned by the defendant and on the material and supplies and other property of the defendant on hand and kept by the defendant for necessary use in operating said railway system, and your orators allege that there is grave danger that the lines of the defendant may no longer be operated in a single system, but the various lines which are now owned or controlled or leased by the defendant may be broken up and be separately operated; that there is likewise grave danger that suits may be instituted against the defendant in respect of the claims above stated; and that it is essential to the interest of the defendant and to the interest of the public and to your orators that the property of the defendant should not be sacrificed; that the position of defendant is the more acute by reason of the depressed financial situation; that the gross income of the system decreased during the last fiscal year about Six hundred thousand dollars, while the expenses of operation and maintenance increased by about the same amount, an aggregate difference of about One million two hundred thousand dollars; that the claims for special franchise taxes which are now in litigation, amount to over Three million dollars, and the Comptroller of the City of New York is pressing for the payment of these taxes, and that the defendant has not

sufficient credit to obtain the funds required for the operation of its properties.

TENTH. And your orators allege, on information and belief, that the only means whereby the defendant can meet its obligations under said lease from said Metropolitan Street Railway Company and pay its floating indebtedness and discharge its current obligations, is by the continued maintenance and operation of said system as a whole by an uninterrupted use thereof; that any suits upon or process against its properties or its revenues would seriously embarrass and cripple it, and diminish, if not destroy, its power successfully to operate said system, in the exercise of its franchises; that said system, together with all its appurtenances, rolling stock and other property connected therewith are now in a reasonably good state and condition; that the railroads operated by the defendant are so numerous and extensive as to constitute practically the entire street surface railroad system in the County of New York; that during the last year the lines owned or leased by the defendant carried about four hundred million passengers, and the average number of persons employed by the defendant and its various controlled and allied corporations will exceed six thousand; that it is of vital importance to the people of said County of New York that said system shall continue to be operated as a whole, and to this end it is of like importance that said system shall be preserved; that notwithstanding the fact that every effort has been made to provide funds for the payment of the indebtedness of the defendant, or for the extension of the time of payment thereof, such efforts have proved unsuccessful; that unless some definite action is taken on behalf of all the creditors so that the operation of defendant's system may be kept intact, great and severe loss will be inflicted on all creditors; that the credit of the defendant has been seriously impaired; that it has not money to pay the debts which have matured, and has

no reasonable hope of finding assistance from any quarter to enable it to do so, and that the defendant is insolvent.

Your orators believe unless the Court, in view of the facts above set forth, shall take said system of the defendant into judicial custody for the protection of every interest therein, that immediately upon default, individual creditors will assert their rights and remedies in different courts; that the result will be a multiplicity of suits and a race of diligence; that attempts will be made to secure judgments and priorities; that levies will be made upon cars, rolling stock, material and supplies indispensible to the operation of the system, which will greatly interfere with, and ultimately prevent defendant from, the proper performance of its duties as a common carrier, and of its mail and express contracts, and will seriously diminish its earnings; that it will be impossible to operate the system as a whole, and the system of transfers among the lines in said system will be broken up, to the serious inconvenience of the public, and a most important and valuable property dismembered, which might be preserved by adequate judicial protection in this Court.

And your orators allege that an attempt by your orators to enforce at law their claims as general creditors would precipitate similar action on the part of other creditors, and this in turn would lead to wasteful strife and controversy, which your orators believe can be avoided, and the property preserved for equitable distribution among those entitled thereto only by the intervention of a Court of equity and the granting of equitable relief, including the appointment of a Receiver.

ELEVENTH. That under these circumstances the interference of a Court of equity for the protection of your orator's rights, is imperatively required, and especially for the timely appointment of a Receiver to take charge of and preserve the property of the defendant, continue the operation of its system for the ac-

commodation of the public, and collect and receive and properly appropriate the income thereof until the final decree of the Court in the premises.

TWELFTH. That this is a civil suit in the nature of a claim in equity, and the matter in dispute exceeds, exclusive of interest and costs, the sum of Five thousand dollars.

THIRTEENTH. Inasmuch, therefore, as your orators have no adequate remedy at law for their aforesaid grievances, and can have relief only in equity, your orators file this bill of complaint in behalf of themselves and other creditors of the defendant, who may come in and contribute to the expense hereof, and pray for equitable relief, as follows:

1. That the rights of your orators and all the other creditors of the defendant may be ascertained and decreed, and that the Court will fully administer the fund in which your orators are interested, constituting the entire railroad system and other assets of the defendant, and will for such purpose marshal all the assets of the defendant and ascertain the several and respective liens and priorities existing thereon, and enforce and decree the rights, liens and equities of the creditors of the defendant, as the same may be finally ascertained and decreed by the Court upon respective interventions or applications of each and every such creditor or lienor in and to each and every portion of the assets and property of the defendant.

2. That for the purpose of preserving the unity of the system of the defendant as it has been maintained and operated, a Receiver may be appointed for the defendant and of all the property of the defendant, real, personal and mixed, of whatsoever kind and description and wheresoever situated, including all railroads owned, leased or operated, tracks and terminal facilities, rolling stock, franchises, leases, rights and prop-

erties with full power to sue for, collect, receive and take into his possession, goods, chattels, rights, credits, moneys, effects, lands, tenements, books, papers and property of every description of the defendant, and with all the incidental powers ordinarily vested in Receivers in like cases, and with full power and authority to run and operate such railroads, estates and property, and to collect and receive all the rents, issues, profits and income thereof, and to apply the said income and receipts thereof under the orders or decrees of the Court, for such period as the Court shall order, to protect and preserve the corporate franchises, privileges and property, and to preserve the corporate existence of the defendant, and to protect and preserve the said railroads, estates and property, real and personal, from being sacrificed under any proceedings which can or may be taken, liable to prejudice or sacrifice the same, and to do any and all acts which may be necessary to preserve valuable rights and franchises of the defendant, or otherwise requisite or proper.

3. That temporarily and pending this suit, an injunction may issue against this defendant and all persons claiming and acting by, through or under it, and all other persons, to restrain them from interfering with said Receiver taking possession of said property, and that your orators may have such further relief in the premises as the nature of the case may require and as may be agreeable to equity.

4. That the defendants be required to answer all and singular the matters above stated.

5. That a writ of subpœna may be granted to your orators to be directed to the defendant, thereby requiring the defendant personally to appear on a certain day before the Court and then and there full, true, direct and perfect answer make to all and singular the premises (but not under oath, which is hereby expressly waived), and further to perform and abide by

such further order, direction or decree therefor, as to the Court shall seem meet.

6. That your orators have such further and other relief as the Court may deem proper and equitable.

And your orators will ever pray, etc.

(Sgd.) BYRNE & CUTCHEON,
Solicitors for Complainants.

(Sgd.) JAMES BYRNE,
Of Counsel.

STATE OF NEW YORK,
County of New York,
SOUTHERN DISTRICT OF NEW YORK, } ss. :

JOHN V. W. REYNDERS, being duly sworn, deposes and says that he is the Vice-President of The Pennsylvania Steel Company, one of the complainants above named; that he has read the foregoing bill of complaint and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

(Sgd.) JOHN V. W. REYNDERS.

Sworn to before me this 24th day of September, 1907.

(Sgd.) EDMUND KIRBY,
Notary Public,
New York County,
New York.

[SEAL.]

STATE OF NEW YORK,
County of New York,
SOUTHERN DISTRICT OF NEW YORK, } ss.:

NATHANIEL J. HAYWOOD, being duly sworn, deposes and says that he is the Secretary of the Degnon Contracting Company, one of the complainants above named; that he has read the foregoing bill of complaint and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

(Sgd.) NATHANIEL J. HAYWOOD.

Sworn to before me this 24th day of September, 1907.

(Sgd.) EDMUND KIRBY,
Notary Public,
New York County,
New York.

[SEAL.]

Filed 24th September, 1907.

Exhibit A[2].

THE PRESIDENT OF THE UNITED STATES OF AMERICA, TO NEW YORK CITY RAILWAY COMPANY, GREETING:

You are hereby commanded that you personally appear before the Judges of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, in Equity, on the first Monday of November, A. D. 1907, wherever the said Court shall then be, to answer a bill of complaint exhibited against you in the said Court by The Pennsylvania Steel Company and The Degnon Contracting Company, and do further and receive what the said Court shall have considered in that behalf. And this you are not to omit under the penalty on you of TWO HUNDRED AND FIFTY DOLLARS.

WITNESS, The Honorable MELVILLE W. FULLER, Chief Justice of the United States, at the Borough of Manhattan, in the City of New York, on the 24th day of September, in the year of our Lord one thousand nine hundred and seven, and of the Independence of the United States of America, the one hundred and Thirty-second.

JOHN A. SHIELDS,
Clerk.

BYRNE & CUTCHEON,
Solicitors for Complainant.

The Defendant is required to enter appearance in the above cause, in the Clerk's office of this Court, on or before the first Monday of November, 1907, or the bill will be taken *pro confesso* against it.

J. A. S.,
Clerk.

Exhibit A[3].

I Hereby Certify, That on the 24th day of September, 1907, at the City of New York, in my district, I served the within Subpœna in Equity upon the within-named Defendant New York City Railway Company by exhibiting to Charles E. Warren as Secretary of said Company at No. 115 Broadway, N. Y. City, the within original, and at the same time leaving with him a copy thereof.

WILLIAM HENKEL,
United States Marshal, Southern District of New York.

Dated Sep. 24, 1907.

[ENDORSED:] U. S. Circuit Court, Southern District N. Y., Filed Sep. 24, 1907, John A. Shields, Clerk.

Exhibit B.

Answer.

IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and DEGNON CONTRACTING COMPANY, Complainants, AGAINST NEW YORK CITY RAILWAY COMPANY, Defendant.	In Equity.

New York City Railway Company, the defendant in this cause, for answer to the bill of complaint herein, or unto so much and such parts thereof as the defendant is advised it is necessary or material for this defendant to make answer unto, answering, says :

FIRST. The defendant admits all the allegations of said bill of complaint.

SECOND. The defendant, reiterating the admissions of the preceding article of this answer, joins in the prayer of said bill of complaint and prays that this Court sitting in equity may take possession of the system of the defendant through the appointment of a Receiver as prayed in said bill of complaint and thereby preserve the unity of the system of the defendant as it has been maintained and operated and protect and preserve the corporate franchises, privileges and property and preserve the corporate existence of the defend-

ant and protect and preserve its said system and its said property, real and personal, from being sacrificed under any proceedings which can or may be taken, liable to prejudice or sacrifice the same, and do any and all acts which may be necessary to preserve the valuable rights and franchises of the defendant, and it accordingly prays that inasmuch as there is no adequate remedy at law in the premises for the complainants or for this defendant, that this Court will, for the purposes aforesaid, appoint a Receiver as prayed for in said bill of complaint, and empower and authorize such Receiver to take possession of the entire property of this defendant and to preserve, manage, operate and control the same, pay all indebtedness due or to become due by this defendant, and otherwise discharge all the duties ordinarily imposed by Courts upon Receivers in similar cases; that on the final hearing in this cause, this Court will, under said bill of complaint and this answer or such supplemental bill as shall be filed herein, make such decree or decrees with respect to the property of this defendant as shall deal with the same on general equitable principles, and that this Court will cause all the liens upon said property or any part thereof and all rights and claims in equity of persons interested therein to be ascertained, defined and determined, and that the proceeds arising from the sale of said property or any part thereof be applied under the said orders or decrees of this Court according to the rights, interests and equities of the parties interested therein, and that this Court will direct all persons in possession of the property of this defendant or any part thereof, to surrender the same to such Receiver or to hold such property under said Receiver.

JAMES L. QUACKENBUSH,
Solicitor for Defendant.

ALFRED A. GARDNER,
Of Counsel.

Southern District of New York,
State of New York,
County of New York, } ss.:

Charles E. Warren, being duly sworn, doth depose and say that he is the Secretary of the New York City Railway Company, the defendant in this suit; that he has read the foregoing answer to the bill of complaint in this suit and knows the contents thereof and that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief and that as to those matters he believes it to be true.

Charles E. Warren.

Sworn to before me this 24th day of September, 1907.

Earl E. Starbard,
[L. S.] Notary Public.

Filed 24th September, 1907.

Exhibit C.

Order Appointing Temporary Receivers.

IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY, Complainants, AGAINST NEW YORK CITY RAILWAY COMPANY, Defendant.	In Equity.

And now on this 24th day of September, 1907, this cause came on to be heard upon the bill of complaint and on the answer of the defendant thereto this day filed, upon motion for the appointment of a Receiver, and after hearing James Byrne for complainants and James L. Quackenbush for the defendant, and after due deliberation,

It was ordered, adjudged and decreed, that Adrian H. Joline, Esq., and Douglas Robinson, Esq., both of the City of New York, be and they hereby are appointed temporary Receivers of the defendant, New York City Railway Company, and of all the property of the said defendant, real, personal and mixed of whatsoever kind and description and wheresoever situated, including all railroads, owned, leased or operated by said defendant, all tracks, terminal facilities, offices, shops and all buildings and appurtenances of every kind, all cars and other rolling stock and equipment, tools, machinery, furniture, fixtures, materials

and supplies, books of account, records and other books, papers and accounts, cash in bank, on deposit and in hand, moneys, debts, things in action, credits, stocks, bonds, securities, deeds, leases, contracts, muniments of title, bills receivable, rents, issues, profits and income accruing and to accrue as well as all interests, easements, privileges and franchises and all assets of every kind; that the said receivers be, and they hereby are, authorized immediately to take possession of the same and to run, manage and operate the said railroads and properties in such manner as will in their judgment produce most satisfactory results so that the operation of the railroad system of the defendant shall be continued in the same manner as at present and the public duties obligatory upon the defendant be in all respects discharged, and to exercise the authority and franchises of defendant and discharge its public duties and to preserve and protect its said system in proper condition and repair and to protect the title and possession and secure and develope the business of the same, and in their discretion to employ and discharge and fix the compensation of all officers, attorneys, managers, superintendents, agents and employees, and to make such payments and disbursements as may be needful and proper in so doing; that the said Receivers be, and they hereby are, authorized to collect the rents, income, tolls and profits of the said railroads and property, and to make appropriate payments therefrom on account of accruing rents and other necessary charges, and they shall have power to redeem any and all securities of the defendant now pledged as security on loans of money, and shall have power to borrow money if needful in their judgment in order to comply with this direction, and also, so far as may be needful to pay off current necessities for labor and supplies, but for no other purpose without the further order of this Court; and the said Receivers are hereby fully authorized and empowered to institute and prosecute all such suits as may be necessary in their judgment for the proper protection of the property and

trust hereby reposed in them and likewise to defend all actions instituted against them as Receivers, and also to appear in and conduct the prosecution or defense of any suit now pending in any court against the defendant, the prosecution and defense of which will in the judgment of said receivers be necessary for the proper protection of the property placed in their charge, or the interests and rights of creditors connected therewith; and the said Receivers are hereby authorized in their discretion from time to time, out of the funds coming into their hands, to pay the expenses of operating the said properties and executing their trusts, and all taxes and assessments upon the said properties or any part thereof, and all such rentals and instalments as may fall or become due for the use of any portion of said railroads and other property; and also to pay and discharge all claims arising from the previous operation of said properties as in their judgment on examination are proper to be paid as expenses of operation and the current and unpaid payrolls and vouchers and supply accounts incurred in the operation of said railroad system at any time within four months prior hereto. The said Receivers are hereby required to open proper books of account wherein shall be stated the earnings, expenses, receipts and disbursements of their said trust, and preserve proper vouchers for all payments made by them on account thereof.

And it is further ordered, that the bond of each of the said Receivers in the sum of Two hundred and fifty thousand dollars, conditioned that he will well and truly perform the duties of his office and duly account for all moneys or property which may come into his hands and abide by and perform all things which he shall be directed to do, with sufficient sureties, to be approved of by a judge of this court, be forthwith filed in the office of the Clerk of this Court:

And it is further ordered that each and every of the officers, directors, agents and employees of the defendant, said New York City Railway Company, and all

other persons whomsoever, be and they are hereby required and commanded forthwith, upon demand of the said Receivers or their duly authorized agent, to turn over and deliver to said Receivers or their duly constituted representative, any and all books of account, vouchers, papers, deeds, leases, contracts, bills, notes, accounts, moneys or other property in his or in their hands or under his or their control, and each of said directors, officers, agents and employees is hereby commanded and required to obey and perform such orders as may be given to them from time to time by the said Receivers or their duly constituted representative, in conducting the operation of the said system and in discharging their duties as Receivers.

And the defendant, said New York City Railway Company and its officers, directors, agents and employees, and all other persons claiming to act by, through or under the defendant and all other persons whomsoever are hereby enjoined from interfering in any way whatever with the possession or management of any part of the property over which the Receivers are hereby appointed or intering in any way to prevent the discharge of their duties or their operating the same, and any party in interest may apply for further direction.

And it is further ordered that the parties hereto show cause before this Court at the United States Post Office Building in the City of New York on the 7th day of October, 1907, at two o'clock in the afternoon why the said rsceivership should not be continued during the pendency of this suit and upon the hearing thereon any other creditor of the defendant or other party in interest may be heard.

Dated, New York, September 24, 1907.

E. HENRY LACOMBE,
United States Circuit Judge.

Filed 24th September, 1907.

Exhibit D.

Petition of Metropolitan Street Railway Company to Be Made Party Defendant.

IN THE CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and DEGNON CONTRACTING COMPANY, Complainants,

AGAINST

NEW YORK CITY RAILWAY COMPANY, Defendant,

In Equity.

IN THE MATTER

OF

THE PETITION OF METROPOLITAN STREET RAILWAY COMPANY,

TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

The petition of Metropolitan Street Railway Company, by J. Parker Kirlin, its solicitor, respectfully shows as follows :

FIRST. This cause is a general creditor's suit and is instituted by the complainants as creditors of the defendant for the administration of the assets and property

of the defendant. For the contents of the bill of complaint and of the answer of the defendant to said bill, reference is made to said bill and answer of record in this Court in this cause.

By an order of this Court duly entered in this cause on September 24, 1907, made on the bill of complaint and on the answer of the defendant thereto, Adrian H. Joline and Douglas Robinson were duly appointed temporary receivers of the defendant New York City Railway Company and of its property, with the powers and duties prescribed in said order. For the precise terms of said order reference is made to the original order of record in this cause. Said Joline and Robinson have duly qualified as receivers as aforesaid and have entered into possession of the property of said defendant and are now operating the same and collecting the rents, issues and profits thereof.

SECOND. Your petition is a consolidated corporation under the laws of the State of New York and by virtue of various consolidations is lawfully vested with the lines of street railway in the City of New York and the appurtenant franchises and property formerly of Lexington Avenue and Pavonia Ferry Railway Company, Columbus and Ninth Avenue Railroad Company, South Ferry Railroad Company, Broadway Surface Railroad Company, and Metropolitan Crosstown Railway Company.

Your petitioner is also the lessee of the lines of street railway in the City of New York of the following companies which by various indentures of lease, demised their respective lines of railway and the appurtenant franchises and property to the petitioner or its predecessors, or to lessors of the petitioner or its predecessors, for terms now unexpired, to wit :

Broadway and Seventh Avenue Railroad Company,
Sixth Avenue Railroad Company,
Ninth Avenue Railroad Company,

Twenty-third Street Railway Company,
Bleecker Street & Fulton Ferry Railroad Company,
Central Park, North and East River Railroad Company,
Forty-second Street and Grand Street Ferry Railroad Company,
Eighth Avenue Railroad Company,
New York and Harlem Railroad Company (City Line),
Second Avenue Railroad Company,
Third Avenue Railroad Company,
Central Crosstown Railroad Company,
Christopher and Tenth Street Railroad Company,

By each of said indentures of lease, a right of reentry is reserved to the lessor in the event of default in the payment of the rent of the demised premises.

THIRD. By indenture of lease bearing date the 21st day of March, 1902, between your petitioner of the one part and the defendant New York City Railway Company, which then bore the name of Interurban Street Railway Company, of the other part, your petitioner leased to said defendant the entire system of street railways of your petitioner, including as well all lines owned by your petitioner as all lines leased to your petitioner, for the term of nine hundred and ninety-nine years from the date of said lease, said lessee agreeing to pay by way of rental therefor, in addition to all taxes and assessments on the demised properties, all rentals payable under the leases of said lines leased to your petitioner and interest on the funded debt of your petitioner and other fixed charges of your petitioner, and an amount equal to seven per cent. per annum upon the existing capital stock of your petitioner and upon such additional capital stock of your petitioner as might thereafter be issued with the written consent of said lessee.

Said indenture of lease provides, among other things, that in case said lessee shall fail at any time to pay the rent provided for in said indenture of lease, or shall fail at any time to keep and perform any of the agreements or covenants contained in said lease, and any such default in the payment of rent or in the performance of the covenants of said lease shall continue for the period of twelve months after written demand and notice from your petitioner to said lessee, then, at the option of your petitioner, the estate by said indenture of lease demised shall cease and determine, and your petitioner shall thereupon become and be entitled to re-enter into and upon the demised railroads and properties. Your petitioner files with this petition as Schedule A hereto, a copy of said indenture of lease, and for a precise statement of the terms and conditions of said indenture of lease prays leave to refer thereto.

FOURTH. The various lines of railway embraced in said lease, as well the lines owned by your petitioner as the lines leased to your petitioner are subject to funded indebtedness secured by mortgage which is now outstanding and which so far as not outstanding at the date of the execution and delivery of said lease has since been created with the consent of said lessee, and your petitioner is informed and believes that failure to meet the interest on such underlying funded indebtedness as such interest matures will operate also a default under the mortgage securing the indebtedness, the interest on which shall so become in default, and will render said mortgage enforceable. Said mortgage indebtedness is as follows:

I.—ON LINES OWNED BY YOUR PETITIONER.

	Amount Outstanding.	When due.	Rate.	Interest when payable.
Metropolitan Street Railway Company, General and Collateral Trust Mortgage	$12,500,000.	Feb. 1, 1997	5%	Feb. 1 & Aug. 1
Metropolitan Crosstown Railway Company First Mortgage	600,000.	Apr. 1, 1920	5%	Apr. 1 & Oct. 1
Lexington Avenue and Pavonia Ferry Railroad Company First Mortgage	5,000,000.	Sep. 1, 1993	5%	Mar. 1 & Sep. 1
Columbus and Ninth Avenue Railroad Company First Mortgage	3,000,000.	Sept. 1, 1993	5%	Mar. 1 & Sep. 1
South Ferry Railroad Company First Mortgage	350,000.	Apr. 1, 1919	5%	Apr. 1 & Oct. 1
Broadway Surface Railroad Company First Mortgage	1,500,000.	July 1, 1924	5%	Jan. 1 & July 1
Metropolitan Street Railway Company Refunding Mortgage	16,604,000.	Apr. 1, 2002	4%	Apr. 1 & Oct. 1

II.—ON LINES LEASED TO YOUR PETITIONER.

	Amount Outstanding.	When due.	Rate.	Interest when payable.
Broadway & Seventh Avenue Railroad Company Second Mortgage	$500,000.	July 1, 1914	5%	Jan. 1 & July 1
Broadway & Seventh Avenue Railroad Company First Consolidated Mortgage	7,650,000.	Dec. 1, 1943	5%	June 1 & Dec. 1
Central Crosstown Railroad Company First Mortgage	250,000.	Nov. 1, 1922	6%	May 1 & Nov. 1
Central Crosstown Railroad Company First Consolidated Mortgage (deposited as collateral security for the three-year notes of that Company to the face amount of $2,250,000)	2,490,000.	May 1, 1952	4%	May 1 & Nov. 1
The Third Avenue Railroad Company First Mortgage	5,000,000.	July 1, 1937	5%	Jan. 1 & July 1
The Third Avenue Railroad Company Consolidated Mortgage	36,943,000.	Jan. 1, 2000	4%	Jan. 1 & July 1
Bleecker Street and Fulton Ferry Railroad Company First Mortgage	700,000.	Jan. 1, 1950	4%	Jan. 1 & July 1
Second Avenue Railroad Company First Mortgage	1,280,000.	Nov. 1, 1909	5%	May 1 & July 1
Second Avenue Railroad Company Debenture Bonds	89,000.	Jan. 1, 1909	5%	Jan. 1 & July 1
Second Avenue Railroad Company First Consolidated Mortgage	5,631,000.	Feb. 1, 1948	5%	Feb. 1 & Aug. 1
Christopher and Tenth Street Railroad Company First Mortgage	210,000.	Oct. 1, 1916	4%	Apr. 1 & Oct. 1

FIFTH. By said refunding mortgage of your petitioner which is expressed to be subject to said indenture of lease, made by your petitioner to said defendant, your petitioner covenanted from time to time punctually to observe and perform all of the obligations and pay and discharge all amounts payable under or by virtue of any lease thereby mortgaged so that the interest of your petitioner in any such leasehold estate might be at all times preserved unimpaired as security for the bonds issued under said refunding mortgage; and said refunding mortgage provides, among other things, that in case default shall be made in the payment of any interest on any bonds by said refunding mortgage secured or in the payment of the principal of any such bond or in case default shall be made in the due observance or performance of any of the covenants or conditions in said refunding mortgage required to be kept or performed by your petitioner, and any such last mentioned default shall continue for a period of sixty days after written notice thereof to your petitioner from the trustee under said refunding mortgage or from the holders of five per cent. or more in amount of the outstanding bonds by said refunding mortgage secured, then the trustee thereunder may forthwith proceed to protect and enforce its rights and the rights of bondholders under said refunding mortgage by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained in said refunding mortgage or in aid of any power therein granted or for the foreclosure of said refunding mortgage for any default or for the collection of interest or principal or both or for the enforcement of any other appropriate legal or equitable remedy as the trustee shall deem most effectual in support of any of its rights and duties under said mortgage. Your petitioner files a copy of said refunding mortgage as Schedule B hereto.

SIXTH. It is alleged among other things in the bill of complaint in this cause and admitted by the answer

of the defendant thereto and your petitioner so charges, that the defendant said New York City Railway Company, since entering into possession of the premises demised by said lease made to it by your petitioner, has operated all the lines owned and leased by said defendant as a single system constituting routes over different lines or parts of lines, connecting separated lines over parts of intermediate leased or controlled lines, interchanging equipment among the various lines and furnishing equipment as might be required to meet from time to time the varying requirements of particular lines, supplying power and using power houses, car barns and stations as deemed best for the effective and economical operation of the system as a whole and also establishing a system of transfers between various lines and routes; that the equipment owned by said defendant has been used over the system as varying requirements of operation made necessary without assignment to any particular line or lines and that many of the lines leased by your petitioner to said defendant are without adequate equipment of their own; and that in many cases the motive power employed or leased or controlled lines has been changed to electricity without supplying said lines with independent power houses or other independent sources of supply of power, leaving such lines dependent for power on other lines of the system.

Your petitioner further shows that it is alleged in said bill of complaint in this cause and is admitted by the answer of the defendant that the defendant is insolvent; that the fixed charges of your petitioner's system hereinabove set forth are accruing and installments thereof will become due on October 1, 1907, and each month thereafter; that failure to meet such fixed charges as they become due will operate a default under the mortgage securing the indebtedness the interest on which shall so become in default and render such mortgage enforceable; that the rentals under the leases made to your petition are accruing and that installments of rental under some or all thereof will

shortly become payable ; that under said lease made to said defendant by your petitioner, no right of reentry by reason of a default in the payment of the rent by said lease reserved or in the performance of any of the agreements or covenants therein contained will accrue thereunder to your petitioner until the expiration of a year after default and written demand and notice from your petitioner and that in the meantime your petitioner's said system may be hopelessly disrupted and your petitioner suffer irremediable loss.

SEVENTH. Your petitioner alleges that its railroad system embraced in said lease is very extensive ; that it is of vital importance to your petitioner and to the creditors of your petitioner that said railroad system should be continued to be operated as a whole, and that said system should be preserved ; that by said lease to the defendant the defendant is bound to finance the requirements of your petitioner for capital expenditures ; that your petitioner has already issued to the defendant its obligations in large amounts on account of advances by the defendant for that purpose, and your petitioner is informed and believes that the defendant has disposed of said obligations, and that said obligations are now outstanding in the hands of other holders ; that claims for personal injuries to a large amount in connection with the operation by your petitioner of its system prior to said lease are now outstanding and are the subject of actions now pending ; that by said lease to the defendant the defendant agreed to pay any judgments recovered in respect of said claims ; that by said lease made by your petitioner to said defendant your petitioner parted with the possession of its entire railroad system ; that your petitioner has no other resources wherewith to meet the fixed charges on the mortgage indebtedness of its said system so leased, or to meet the accruing rentals of said lines so leased to your petitioner or its predecessors, and by your petitioner so

leased to said defendant or to meet judgments for said claims for personal injuries, or to meet its said outstanding obligations for capital expenditures as they mature, or to meet other indebtedness or liabilities of your petitioner than the rentals reserved under said lease made by your petitioner to the defendant, as part of which said defendant agreed to pay such fixed charges and such rentals and to perform the other covenants therein contained; that said system is in the possession of this Court through its said Receivers appointed in this cause for administration in accordance with equitable principles; that no substantial remedial action can be taken in this cause at the instance of said defendant or at the instance of defendant's creditors which will not affect the rights of your petitioner; and that the rights of your petitioner are inextricably interwoven with the rights which this Court has undertaken to administer in this cause.

Your petitioner therefore prays,

I. That your petitioner may become party defendant to said suit for the protection of its interests and those of its creditors.

II. That the receivership under the bill of complaint in this cause be extended so as expressly to embrace the interests of your petitioner in said property, your petitioner submitting itself and its property to the jurisdiction of this court.

III. That said receivers be further directed to keep separate accounts not only of the lines owned by said defendant but also of such of the leased lines embraced in your petitioner's system and in your petitioner's said lease as may be deemed practicable, and that the rents, issues, profits and income be applied under the orders or decrees of this court to the end that said system of your petitioner may be protected and preserved.

IV. That your petitioner may have such other and further relief as may be just.

METROPOLITAN STREET RAILWAY COMPANY,
By D. C. MOOREHEAD,
Secretary.

J. PARKER KIRLIN,
Solicitor and counsel for Petitioner,
27 William Street,
New York.

SOUTHERN DISTRICT OF NEW YORK,
State of New York,
COUNTY OF NEW YORK, } ss.:

D. C. MOOREHEAD, being duly sworn, says: That he is the Secretary of the Metropolitan Street Railway Company, the petitioner herein, that he has read the foregoing petition in this cause, and knows the contents thereof, and that the same is true of his own knowledge, except the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

D. C. MOOREHEAD.

Sworn to before me this 1st day of October, 1907.

EDWARD H. CARPENTER,
[SEAL.] Notary Public,
New York County,
New York.

Filed 1st October, 1907.

Schedule A, Referred to in Petition of Metropolitan Street Railway Company, Exhibit D.

METROPOLITAN STREET RAILWAY COMPANY

TO

INTERURBAN STREET RAILWAY COMPANY.

LEASE.

DATED FEBRUARY 14, 1902.

THIS INDENTURE made this fourteenth day of February, in the year nineteen hundred and two, between the METROPOLITAN STREET RAILWAY COMPANY (hereinafter referred to as the "Lessor"), party of the first part, and the INTERURBAN STREET RAILWAY COMPANY (hereinafter referred to as the "Lessee"), party of the second part WITNESSETH:

Whereas:

1. Each of the parties hereto is a railroad corporation organized and existing under the laws of the State of New York.

2. The Lessor owns and operates street surface railroads and railroad routes in the County of New York, City of New York, and State of New York, described as follows:

Houston, West Street & Pavonia Ferry, or Avenue C Line.

Commencing at the intersection of Duane street with West Street, thence through and along Duane street with a double track to Greenwich street, thence through and along Greenwich street with a single track to

Charlton street, thence through and along Charlton street with a single track to Prince street, thence through and along Prince street with a single track to Bowery, thence upon and across the Bowery with a single track to Stanton street, thence through and along Stanton street with a single track to Pitt street, thence through and along Pitt street with a single track to Avenue C, thence through and along Avenue C, with a single track to Third street, thence through and along Avenue C, from Third street with a double track to the northern extremity of said Avenue C, thence through and along Third street, connecting with the double track in Avenue C, with a single track to First Avenue, thence through and along First Avenue with a single track to East Houston street, thence through and along East Houston street with a single tnack to the Bowery, thence upon and across the Bowery with a single track to West Houston street, thence through and along West Houston street, with a single track to Washington street, thence through and along Washington street with a single track to Duane street; thence through and along Duane street, connecting with the double track to the place of beginning, being the route described in Chapter 625 of the Laws of 1868.

Extension of Avenue C through Seventeenth street, etc.

Through Seventeenth and Eighteenth streets, by single track in each street, to Avenue A, thence through and along Avenue A, by double track to Twenty-third street; thence through and along Twenty-third street, by double track to First Avenue; thence through and along First Avenue, by double track, to Thirty-sixth street; thence through and along Thirty-sixth street, by single track, to Lexington Avenue; and also through and along Thirty-fifth street, by a single track, from First Avenue to Lexington Avenue; thence through and along Lexington Avenue, by single or double track, to Forty-second street; thence through and along

Forty-second street by double track to Fourth Avenue. Also, by single track, through and along Charlton street, from Greenwich to West street; and, by single track, through and along West Houston street, from Washington street to West street; thence through and along West street by double track, to Chambers street. Also, through and along Tenth street, connecting with the double track in Avenue C, by single track to Avenue D; thence through and along Tenth street, by double track, to the East River. Also, connecting with the double track on Tenth street, through and along Avenue D, by single track, to Eleventh street; thence through and along Eleventh street, by single track, to and connecting with the double track on Avenue C, being the route described in Chapter 19 of the Laws of 1871.

The Chambers Street and Grand Street Ferry Line.

Commencing at the foot of Roosevelt Street, East River, thence through, upon and along South street, with double tracks to James Slip; thence through, upon and along James Slip, with double tracks, to New Chambers street; thence through, upon and along New Chambers street to Chatham street, with double tracks; thence across Chatham street to Chambers street, with single track; thence through, upon and along Chambers street, with single track, to Pavonia Avenue Ferry, foot of Chambers street, North River; thence returning, with single or double tracks, through, upon and along West street to Duane street; thence through, upon and along Duane street, with single track to and across Chatham street to connect with their double tracks at New Chambers street. Also from New Chambers street, at Madison street, through, upon and along Madison street, with double tracks to Grand street; thence through, upon and along Grand street, with single or double tracks to the ferry at the foot of Grand street. Also, from Madison street, at Jackson street, through, upon and along

Jackson street, with double or single tracks to Cherry street; thence through, upon and along Cherry street, with double or single tracks to the East River; thence through, upon and along East street, with double or single tracks, to connect with their tracks at the foot of Grand street, East River, being the route described in the resolution of the Common Council of the City of New York, on December 30, 1889.

The Broadway Surface Line.

Commencing at the southerly end of Broadway near the Battery and running thence with double tracks through and along Broadway, and across Fourteenth street to and along Union Square to a point at or near the intersection of Fifteenth street and West Union Square, being the route described in the resolution of the Common Council of the City of New York, adopted December 5, 1884.

South Ferry Line.

Commencing at the northerly side of Vesey street; thence through, upon and along Church street, with double track to Morris street; thence through, upon and along Morris street, with a double track to Greenwich street; thence through, upon and along Greenwich street, with a double track to Battery Place; thence through, upon and along Battery Place with a double track to State street; thence through, along and upon State street with a single track, to Whitehall street; thence through, upon and along Whitehall street, with a single track to the South Ferry; returning through, upon and along Whitehall street to Bowling Green; thence through, upon and along the southerly side of Bowling Green to connect with double tracks at Battery Place, being the route described in Chapter 508 of the Laws of 1874.

The Metropolitan Cross-Town Line.

Commencing upon East street, at or near the Grand street Ferry, and running thence through, upon and along East street, with a double track to Delancey slip or street; thence through, upon and along Delancey street, with a double track, to the Bowery; thence through, upon and across the Bowery to Spring street; thence through, upon and along Spring street, with a double track, to South Fifth avenue; thence through, upon and along South Fifth avenue, with a double track, to Fourth street; thence through, upon and along Fourth street, with double track, to MacDougal street; thence through, upon and along MacDougal street, with a double track, to Waverly place; thence through, upon and along Waverly place, to Christopher street, with a double track; thence through and along Waverly place, from Christopher to Bank street with a single track; thence through, upon and along Bank street, with a double track, to Greenwich avenue; thence through, upon and along Greenwich avenue, with a double track, to Thirteenth and Horatio streets; thence through, upon and along Thirteenth street and Horatio street, with a single track, to Eighth avenue; thence through, upon and across Eighth avenue to Thirteenth street; thence through, upon and along Thirteenth street, with a double track to Thirteenth avenue; thence, through, upon and along Thirteenth avenue, with a double track, to Fourteenth street, being the route described in the resolution of the Common Council of the City of New York, adopted December 24, 1889.

The Lexington Avenue and Pavonia Ferry Line.

Commencing at Forty-second street, in the City of New York, at a point of connection with the tracks of the Houston, West Street & Pavonia Ferry Railroad Company, at the junction of said street with Lexington Avenue; thence on or over said Lexington Avenue,

with double tracks, to Harlem River, with further constructions and extensions from the junction of One Hundred and Sixteenth Street and Lexington Avenue, through One Hundred and Sixteenth Street to Morningside Park and to the East River, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

The Columbus and Ninth Avenue Line.

Commencing in Columbus Avenue, in the City of New York, at or near Sixty-fourth street, there to connect with the existing double track of the Ninth Avenue Railroad Company in said Avenue; thence running across the surface of the Boulevard and upon, along and over the surface of Columbus Avenue (formerly named Ninth Avenue), with double tracks to One Hundred and Tenth street; also from Columbus Avenue, with double tracks through and along One Hundred and Sixth street to Amsterdam Avenue, to connect with the existing double tracks in Amsterdam Avenue (formerly named Tenth Avenue), now owned by the Ninth Avenue Railroad Company, being the route described in the resolution of the Common Council of the City of New York, adopted October 10, 1892.

Fort Lee Ferry Extension.

Commencing at the intersection of One Hundred and Twenty-fifth street and Amsterdam (formerly Tenth) avenue, running thence westerly, through One hundred and Twenty-fifth street to the Boulevard, thence northerly through the Boulevard to One Hundred and Thirtieth street and thence westerly, through One hundred and Thirtieth street westerly to Twelfth avenue, to a point on the west side of said avenue at or near Manhattan street and at or near Fort Lee Ferry, being the route described in the resolution of the Common Council of the City of New York, adopted December 19, 1893.

Columbus and Ninth Avenue Railroad Connection and Extension on One hundred and Ninth Street.

Commencing at the intersection of Columbus Avenue and One Hundred and Ninth Street, and connecting there by suitable curves, switches and appliances with the road of the Columbus and Ninth Avenue Railroad Company, running thence easterly with double tracks, through, upon and along One Hundred and Ninth Street to Manhattan Avenue; thence northerly, upon Manhattan Avenue, with double tracks, to the southerly side of Cathedral Parkway (formerly One Hundred and Tenth street), there to unite with an extension or branch of the Metropolitan Street Railway Company, being the route described in the resolution of the Common Council of the City of New York, adopted September 18, 1894.

Metropolitan Street Railway Connection and Extension on Manhattan Avenue.

Commencing at the intersection of Manhattan Avenue and One Hundred and Sixteenth street, and connecting there by suitable curves, switches and appliances with the road of the Metropolitan Street Railway Company, running thence southerly, with double tracks, through, upon and along Manhattan Avenue to the southerly side of Cathedral Parkway (formerly One Hundred and Tenth street), there to unite with an extension or branch of the Columbus and Ninth Avenue Railroad Company, being the route described in the resolution of the Common Council of the City of New York, adopted September 18, 1894.

Houston, West Street & Pavonia Ferry Connection and Extension on Ridge and Montgomery streets.

Commencing at the intersection of Houston Street and Avenue C in the City of New York, connecting there by suitable curves and appliances with the route

of the Houston, West Street & Pavonia Ferry Railroad Company, running thence through, upon and along Houston Street over the single track in said street of the road of the Forty-second Street and Grand Street Ferry Railroad Company to Ridge Street; thence (with suitable curves and appliances at or near Ridge Street) through, upon and along Ridge Street with a single track to the said point of union, and by the construction, maintenance and operation of an extension or branch of the said railroad formerly of the Chambers Street and Grand Street Ferry Railroad Company, commencing at the intersection of Montgomery and Madison Street, connecting there by suitable curves and appliances with the said road formerly of the Chambers Street and Grand Street Ferry Railroad Company, running thence with a single track through, upon and along Montgomery street to Division street; thence through, upon and across Division street to Ridge street; thence through, upon and along Ridge street with a single track to the said point of union, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Houston, West Street & Pavonia Ferry Railroad Connection and Extension on Pitt and Gouverneur Streets.

Commencing at the intersection of Third Street and Avenue C, connecting there by suitable curves and appliances with the tracks of the Houston, West Street & Pavonia Ferry Railroad Company, and running thence with an additional single track through, upon and along Avenue C to and across Houston Street to Pitt Street, there to connect by suitable curves and appliances with the existing single track of the Houston, West Street & Pavonia Ferry Company in Pitt Street, and running thence through, upon and along Pitt Street over the said single track in said street to Stanton Street; thence (with suitable connections and

curves at Stanton Street) upon and across Stanton Street with a single track; thence through, upon and along Pitt Street to said point of union; and by the construction, maintenance and operation of an extension or branch of the railroad formerly of the Chambers Street and Grand Street Ferry Railroad Company, commencing at the intersection of Gouverneur Street and Madison Street, connecting there by suitable curves and appliances with the said road formerly of the Chambers Street and Grand Street Ferry Railroad Company, running thence, with a single track, through, upon and along Gouverneur Street to and across Grand Street; thence with a single track through, upon and along Pitt Street to said point of union, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Metropolitan Cross-Town Connection and Extension on West Third Street.

Commencing at the intersection of South Fifth Avenue and West Third street, connecting there by suitable curves and attachmentss with the road of the Metropolitan Cross-Town Railroad Company, and running thence westerly with double tracks through, upon and along West Third street to a point of union with an extension or branch of the railroad of the Sixth Avenue Railroad Company, at or near Sullivan street, being the route described in the resolution of the City of New York, adopted September 29, 1892.

Metropolitan Cross-Town Connection and Extension on Broome, Sullivan and Watts Streets.

From Spring street on South Fifth Avenue to Canal street and West Broadway, from a connection therewith on South Fifth Avenue, at the intersection of Broome street, by suitable curves and appliances; thence with double tracks through, upon and along Broome street to Sullivan street; thence through, upon

and along Sullivan street with double tracks to Watts street; thence through, upon and along Watts street with double tracks to a union with the route and road of the Houston, West Street & Pavonia Ferry Railroad Company, now on West street, and to connect also with Desbrosses Street Ferry, said branch over said streets to said union of the routes or road of said Metropolitan Street Railway Company when built on South Fifth Avenue to Broome street as aforesaid, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Metropolitan Cross-Town connection and Extension on South Fifth Avenue.

Commencing on South Fifth Avenue and Spring street, connecting there by suitable curves and appliances with the existing road of the Metropolitan Cross-Town Railway Company, and running thence southerly with double tracks through, up and along South Fifth Avenue to Broome street, being the route described in the resolution of the Common Council of the City of New York, September 29, 1892.

Houston, West Street & Pavonia Ferry Connection and Extension on Lexington Avenue.

Along and over Lexington Avenue from Twenty-seventh street to Thirty-fifth street by double track, and by single track from Thirty-fifth street to Thirty-sixth street, being the route described in the resolution adopted by the Common Council of the City of New York, September 29, 1892.

Metropolitan Street Railway Connection and Extension on West Broadway.

Commencing at the intersection of West Broadway and Duane Street, and connecting there by suitable

curves, switches and appliances with the Metropolitan Street Railway Company's existing tracks in said Duane Street, running thence southerly in or upon West Broadway, with a single track to Chambers Street, and thence southerly with double tracks, in or upon West Broadway (a portion of which was formerly College Place), to Vesey Street, there to connect with a double-track extension or branch of the railroad route of the Central Park, North and East River Railroad Company, being the route described in the resolution of the Common Council of the City of New York, adopted April 14, 1896.

3. The Lessor owns the following described pieces and parcels of land with the buildings and improvements thereon, situated, lying and being in the County of New York, City of New York and State of New York :

A. Real Estate not subject to the Lessor's General and Collateral Trust Mortgage.

Lexington Avenue and Thirty-third Street Property

All that certain plot, piece or parcel of land with buildings thereon erected, situate, lying and being in the City and County of New York, bounded and described as follows ; Beginning at a point formed by the intersection of the easterly line of Park (formerly Fourth) Avenue, with the northerly line or side of Thirty-second Street ; running thence northerly along the easterly side of Park Avenue, one hundred and ninety-seven (197) feet six (6) inches to the southeasterly corner of Park Avenue and Thirty-third Street ; thence easterly along the southerly side of Thirty-third Street, four hundred and twenty-five (425) feet to the southwesterly corner of Thirty-third Street and Lexington Avenue ; thence southerly along the westerly side of Lexington Avenue, one hundred forty-seven (147) feet, eight (8) inches ; thence westerly

parallel or nearly so with Thirty-third Street, forty-nine (49) feet; thence southerly and nearly parallel with Lexington Avenue, forty-nine (49) feet ten (10) inches; to the northerly side of Thirty-second Street, at a point distant forty-eight (48) feet seven (7) inches westerly from the westerly side of Lexington Avenue; thence westerly along the northerly side of Thirty-second Street, three hundred seventy-six (376) feet five (5) inches to the point or place of beginning; being the same premises heretofore conveyed to The New York and Harlem Railroad Company by the following instruments, to wit: Deed from Mary Murray, dated January 8th, 1849, and recorded in the office of the Register in and for the County of New York in Liber 518 of Conveyances, page 420; deed from Nathan Jackson and wife, dated February 22nd, 1849, and recorded in said Register's office in Liber 558 of Conveyances, page 215; deed from John Alstyne, dated December 13th, 1851, and recorded in said Register's office in Liber 590 of Conveyances, page 226; deed from Henry Abell and wife, dated September 1st, 1865, and recorded in said Register's office, in Liber 947 of Conveyances, page 251; deed from Jesse A. Marshall and wife, John F. Marshall and William H. Wilkins and wife, dated June 1st, 1875, and recorded in said Register's office in Liber 1333 of Conveyances, page 51; deed from Peter S. Bogert and wife, dated December 10th, 1849, and recorded in the said Register's office in Liber 537 of Conveyances, page 447, and which premises were conveyed by The New York and Harlem Railroad Company to Oren Boot, Junior, by deed bearing date September 6th, 1899, and recorded in the office of the Register of the City and County of New York on September 11th, 1899, in block seven (Conveyances), section 3, liber 65, page 136; block number 888, and section 5, liber 63, page 307, block number 1497, and were conveyed by Oren Root, Jr., to the Lessor by indenture dated September 22nd, 1899, subject to a mortgage made by the said Root to the Mutual Life Insur-

ance Company, dated September 20th, 1899, to secure the payment of the sum of $950,000 and interest.

85th and 86th Streets and Madison Avenue Property.

Also, all those certain lots, pieces or parcels of land, with the buildings and improvements thereon, situate, lying and being in the City and County of New York, bounded and described as follows: Beginning at a point formed by the intersection of the northerly side of Eighty-fifth Street and the westerly side of Madison Avenue, and running thence westerly along the northerly side of said Eighty-fifth Street, two hundred and twenty (220) feet; thence northerly parallel with Madison Avenue two hundred and four (204) feet four (4) inches, to the southerly side of Eighty-sixth Street; thence easterly along the southerly side of Eighty-sixth street, two hundred and twenty (220) feet to the southwesterly corner of Eighty-sixth Street and Madison Avenue, and thence southerly along the westerly side of Madison Avenue two hundred four (204) four feet (4) inches to the point or place of beginning; being the same premises heretofore conveyed to the said lessor by the following instruments, to wit: Deed from Webster Wagner and wife, dated November 5th, 1881, and recorded in the office of the Register in and for the County of New York, in Liber 1923 of Conveyances, page 203; deed from George B. Heath, dated December 3rd, 1886, and recorded in said Register's Office, in liber 1998 of Conveyances, page 468; deed from Clark R. Gavit, dated December 22nd, 1885, and recorded in said Register's Office in Liber 2273 of Conveyances, page 333; deed from Webster Wagner and wife, dated November 12th, 1881, and recorded in said Register's office, in Liber 1912 of Conveyances, page 342; deed from Warren S. Crane, dated November 21st, 1889, and recorded in said Register's office in Liber 2273 of Conveyances, page 331, and deed from James M. Gotendorf and others, dated August 12th, 1885, and recorded in said

Register's office, in liber 1912 of Conveyances, page 347 ; and which premises were conveyed by the New York and Harlem Railrood Company to Oren Root, Junior, by deed bearing date September 6th, 1899, and recorded in the office of the Register of the City and County of New York on September 11th, 1899, in Block seven (Conveyances) section 3, liber 65, page 136 ; block number 888, and section 5, liber 63, page 307 ; block number 1497, and were conveyed by Oren Root, Jr., to the Lessor by indenture dated September 22nd, 1899, subject to a mortgage made by tne said Root to the Mutual Life Insurance Company dated September 20th, 1899, to secure the payment of the sum of $950,000 and interest.

146th Street, 147th Street, Lenox and 7th Ave. Property.

All that certain lot, piece or parcel of land situate, lying and being in the Twelfth Ward, in the City of New York, bounded and described as follows: Beginning at a point on the westerly side of Lenox Avenue (formerly Sixth Avenue) at a point distant one hundred (100) feet north of the corner formed by the intersection of the northerly side of One hundred and Forty-sixth Street with the westerly side of Lenox Avenue, running thence northerly along the westerly side of said Lenox Avenue to the corner formed by the intersection of the westerly side of Lenox Avenue and the southerly side of One hundred and Forty-seventh Street, running thence westerly along the southerly side of One hundred and Forty-seventh Street, to the corner formed by the intersection of the southerly side of One hundred and Forty-seventh Street with the easterly side of Seventh Avenue, running thence southerly along the easterly side of said Seventh Avenue to the corner formed by the intersection of the easterly side of Seventh Avenue with the northerly side of One hundred and Forty-sixth Street, running thence easterly along

the northerly side of One hundred and Forty-sixth Street to a point distant four hundred and forty (440) feet westerly from the corner formed by the intersection of the northerly side of One hundred and Forty-sixth Street with the westerly side of Lenox (formerly Sixth Avenue), thence running northerly and parallel with the westerly side of Lenox Avenue aforesaid one hundred (100) feet, thence running eastwardly and parallel with the northerly side of One hundred and Forty-sixth Street four hundred and forty (440) feet to the point or place of beginning; conveyed by indenture dated September 30, 1897, from Metrodolitan Traction Company to the Lessor and which indenture was recorded in the Office of the Register of the City and County of New York, on October 11, 1897, in block series (Conveyances), Section 7, Liber 48, page 99, and indexed under Block Number 2015 on the Land Map of the City of New York, and being part of the land which was conveyed to the Metropolitan Traction Company by Charles D. Lane and Rosa G., his wife, by deed dated the 1st day of July, 1894, and recorded in the office of the Register of the City and County of New York on the 17th day of July, 1894, in block series (Conveyances) Section 7, Liber 22, page 384, in block 2015 on the land map of the City of New York, and being subject to a mortgage of $150,000, with 5 per cent. per annum given by John D. Crimmins to the Mutual Life Insurance Company, dated February 20, 1893; due February 29, 1894, and being also subject to the restrictions and covenants contained in a certain grant of the Mayor, Aldermen and Commonalty of the City of New York to Mary G. Pickney, dated the seventh day of November, 1867, and recorded in the Register's Office of the City and County of New York, in Liber 1041 of Conveyances, page 1, on the 15th day of November, 1867, in so far as the same affects the said described premises.

Dry Dock Street Property.

All that certain lot, piece or parcel of land, with the building thereon erected, situate, lying and being in the City of New York, in the Eleventh Ward of said City, in section two (2) in block 380 on the Land Map thereof, and bounded and described as follows :

Beginning at a point on the westerly side of Dry Dock Street at the middle of the party wall distant southerly from the point or angle formed by the intersection of the westerly line of Dry Dock Street and the southerly line of Eleventh Street, ninety-seven (97) feet five (5) inches, or thereabouts, running thence westerly parallel or nearly so with Eleventh Street and part of the way through a party wall, eighty-four (84) feet, thence northerly and parallel, or nearly so, with Dry Dock Street, twenty-two (22) feet one (1) inch, thence easterly parallel or nearly so with Eleventh Street, eighty-four (84) feet to the westerly line of Dry Dock Street, thence southerly along the westerly line of Dry Dock Street, twenty-two (22) feet one (1) inch to the point or place of beginning ; be the said dimensions more or less. Being the same premises conveyed to the Metropolitan Traction Company of New York by Joseph Brangean of the City of New York, by deed dated November 23d, 1892, and recorded the same day in the office of the Register of the City and County of New York in Block Series (Conveyances) Section 2, Liber 14, page 444, and indexed under Block number 380, and which were conveyed by the Metropolitan Traction Company of New York to the Lessor by indenture dated September 15, 1897, and recorded in the office of the Register of the City and County of New York on September 28th, 1897, in block series (Conveyances) Section 2, Liber 56, page 229, and indexed under Block Number 380.

Front Street Property.

All those three certain lots, pieces or parcels of land, with the buildings and improvements erected thereon, situate, lying and being in the City of New York, and known as Nos. 13, 15 and 17 Front Street, which, taken together, according to a survey thereof made August, 1883, are bounded and described as follows :

Beginning at the northeasterly corner thereof at a point in the southerly line or side of Front Street, opposite the middle of a party wall and distant thirty-three (33) feet westerly from the southwesterly corner of Front and Broad Streets, and running thence southwardly parallel, or nearly so, with Broad Street, and along the middle of said party wall, one hundred and five (105) feet to a point opposite a fence ; thence westwardly along said fence and parallel, or nearly so, with Front Street eighteen (18) feet nine and a half (9½) inches to an angle in said fence ; thence in a northwesterly direction and along said fence to another angle therein, four (4) feet and six (6) inches ; thence again westwardly parallel, or nearly so, with Front Street, and along said fence, the brick wall of a five story building and another fence, thirty-seven (37) feet four and three-quarter (4¾) inches to the wall of a five story brick building ; thence northwardly and along said wall to an angle therein twenty (20) feet ; thence again westwardly along said wall three (3) feet six (6) inches to the middle of a party wal;l thence northwardly along the middle of said party wall and parallel, or nearly so, with Moore Street, eighty (80) feet to the southerly side of Front Street, and thence eastwardly along said southerly side of Front Street, sixty-five (65) feet and two (2) inches to the point or place of beginning.

That portion which is known as No. 13 Front Street being subject to an agreement made by Mulford Martin with Elias H. Herrick, dated May 28th, 1840.

Being the same property which was conveyed to the Metropolitan Traction Company of New York by John

D. Crimmins, by deed dated the 29th day of September, 1892, and recorded in the office of the Register of the City and County of New York on the same date in block series (Conveyances), section 1, Liber 10, page 472, block No. 4, and which was conveyed to the Lessor by deed dated September 11, 1896, and recorded in the office of said Register on September 28th, 1897, in block series (Conveyances), Section 1, Liber 43, page 361, block number 4.

Ninth Avenue Property.

All those forty certain lots and parts of lots or gores of land, situate, lying and being in the City of New York, in the Twenty-second Ward of said city, in section four in block 1044 on the Land Map thereof, which, taken together as one parcel, are bounded and described as follows, viz: Beginning at a point on the easterly side or line of the Ninth Avenue which is distant sixty-five feet northerly from the northerly line of Fifty-third Street; running thence northerly along said easterly line of Ninth Avenue one hundred and thirty-five (135) feet, ten (10) inches, to the southerly line of Fifty-fourth Street; thence easterly along said southerly line of Fifty-fourth Street, five hundred and twenty-five (525) feet, and to a point distant two hundred and seventy-five (275) feet, westerly from the point of intersection of the southerly line of Fifty-fourth Street with the westerly line of Eighth Avenue; thence southerly on a line at right angles with the said southerly line of Fifty-fourth Street one hundred and sixty-five (165) feet, eleven and three-eighth (11⅜) inches; thence in a northwesterly direction, eighty-one (81) feet, two (2) inches to a point distant thirty-eight (38) feet, two (2) inches, north of Fifty-third Street; thence westerly eighty-two (82) feet to a point forty-nine (49) feet north of Fifty-third Street; thence westerly one hundred and twenty-nine (129) feet and one (1) inch to a point distant fifty-two (52) feet north on Fifty-third street; thence westerly one hundred and forty-one

(141) feet to a point distant fifty-one (51) feet, eight (8) inches, north of Fifty-third Street; thence westerly sixty-one (61) feet five (5) inches, to a point distant fifty-six (56) feet five (5) inches, north of Fifty-third Street; thence westerly thirty-one (31) feet, four (4) inches, to the easterly line of Ninth Avenue, at the point or place of beginning; together with all the buildings and erections now existing thereon; being part of the premises conveyed to John D. Crimmins by The Eighth Avenue Railroad Company, a corporation created and existing under the laws of the State of New York, by deed bearing date the 19th day of July, 1892, and recorded in the office of the Register of the City and County of New York on the 3d day of August, 1892, in Block Series of Conveyances, Section 4, Liber 17, page 78½; and by said John D. Crimmins conveyed to the Metropolitan Traction Company by deed dated September 29th, 1892, recorded same day in Liber 18, (Conveyances), page 138, section 4, Blocks 1044 and 1045; and by said Metropolitan Traction Company to the Lessor by deed dated September 11th, 1896, and recorded in the office of the Register of the City and County of New York, on the 28th day of September, 1897, in block series (Conveyances), Section 4, Liber 62, p. 11, and indexed under Block Numbers 1044 and 1045 on the Land Map of the City of New York.

Subject to a certain mortgage bearing date the 19th day of July, 1892, made by John D. Crimmins to the Eighth Avenue Railroad Company, to secure the payment of the sum of Two hundred and fifty thousand (250,000) dollars and interest on which $50,000 has been paid.

Fifty-third Street Property.

All that certain gore, lot, piece or parcel of land with the building thereon situate, lying and being on the northerly side of 53d Street in the City of New York, in the twenty second ward of said city, in section

4, in block 1044 on the land map thereon, and bounded and described as follows:

Beginning at a point on the northerly side of Fifty-third Street at a point distant four hundred and thirty-four (434) feet eleven (11) inches easterly from the corner formed by the intersection of the easterly side of Ninth Avenue with the northerly side of Fifty-third Street, running thence northerly and parallel with Ninth Avenue thirty-nine (39) feet three and one-half (3½) inches or thereabouts to the southerly line of lands formerly of Jacob Harsen; thence easterly along the said line of lands formerly of Jacob Harsen, twenty-five (25) feet or thereabouts, thence southerly and again parallel with Ninth Avenue thirty-seven (37) feet five and one eighth (5⅛) inches or thereabouts to the northerly side of Fifty-third Street, and thence westerly along said northerly side of Fifty-third Street twenty-five (25) feet to the point or place of beginning.

Being the same premises conveyed to John D. Crimmins of New York City by Margaret F. Miller by deed dated August 3rd, 1892, and recorded in the office of the Register of the City and County of New York, August 3rd, 1892, in Block series (Conveyances) Section 4, Liber 17, page 87, and by the said John D. Crimmins conveyed to the Metropolitan Traction Company of New York by deed dated September 29th, 1892, and recorded in the office of the Register of the City and County of New York on the 29th day of September, 1892, in Block Series (Conveyances) section 4, Liber 18, page 135, block number 1044, and by the said Metropolitan Traction Company of New York conveyed to the lessor by deed dated September 15, 1897, and recorded in the office of said Register on September 28, 1897, in block series (Conveyances) Section 4, Liber 62, page 9, block number 1044.

B. Real Estate subject to the Lessor's General and Collateral Trust Mortgage.

Ninety-six Street and First Avenue Property.

All that certain block, piece or parcel of land with the buildings and improvements thereon, situate, lying and being in the Twelfth Ward of the City of New York, and bounded and described as follows, viz: Northerly by the middle line of Ninety-sixth Street; southerly by the middle line of Ninety-fifth Street; westerly by the middle line of First Avenue, and easterly, by the East or Harlem River. And, also the land under water, and all pre-emptive rights, in, upon and under the East or Harlem River, lying in front of the above described block; being the premises conveyed by Daniel B. Hasbrouck and wife to the Metropolitan Street Railway Company, by deed bearing date April 7, 1897, and recorded in the office of the Register of the City and County of New York, in block series (Conveyances), Section 5, Liber 49, page 25.

Avenue C Depot Property.

All those two certain lots, pieces or parcels of lands, with the buildings and improvements thereon, situate in the Eleventh Ward of the City of New York, and which taken together are bounded and described as follows:

Beginning on the northerly line or side of Eleventh Street, distant one hundred and eighty-three feet easterly from the corner formed by the intersection of the northerly side of Eleventh Street with the easterly side of Avenue C, as the same is now laid out and widened, which said widening was not noted or allowed for on the map hereinafter mentioned, and running thence northerly and parallel with Avenue C one hundred and three (103) feet three (3) inches to the centre line of the block between Eleventh and Twelfth Streets;

thence easterly along said centre line of the block and parallel with Eleventh Street fifty (50) feet; thence southerly and parallel with Avenue C one hundred and three (103) feet three (3) inches to the northerly side or line of Eleventh Street, and thence westerly along the same fifty (50) feet to the point or place of beginning.

All that certain lot, piece or parcel of land with the buildings thereon erected, situate, lying and being in the Eleventh Ward in the City of New York, and bounded and described as follows: Beginning at a point on the northerly side of Tenth street, distant two hundred and thirty-three (233) feet easterly from the northeasterly corner of Tenth Street and Avenue C, and thence northerly and parallel with Avenue C eighty (80) feet to the point or place of beginning, running northerly from that point and parallel with Avenue C fourteen (14) feet and nine (9) inches; thence easterly and parallel with Tenth Street twenty-five (25) feet; thence southerly and again parallel with Avenue C fourteen (14) feet and nine (9) inches; thence westerly and again parallel with Tenth Street, twenty-five (25) feet, to the point or place of beginning.

All that certain piece of land, with the buildings thereon situate, lying and being in the Eleventh Ward of the City of New York on the northerly side of Tenth Street and beginning at a point two hundred and eight (208) feet distant easterly from the northeasterly corner of said Tenth Street and Avenue C, and running thence easterly along the northerly side of Tenth Street, twenty-five (25) feet; thence northerly on a line parallel with Avenue C ninety-four (94) feet and nine and one half (9½) inches, to the centre line of the block between Tenth and Eleventh Streets; thence westerly on a line parallel with Tenth Street twenty-five (25) feet; thence southerly on a line parallel with Avenue C ninety-four (94) feet nine and one half (9½) inches, to Tenth Street, aforesaid, the place of beginning.

Also, six other lots, pieces and parcels of ground and premises, with the buildings thereon, situate,

lying and being in the Eleventh Ward of the said City of New York and bounded and described as follows: Beginning at a point on the southerly side of Eleventh Street, distant one hundred and eight (108) feet easterly from the southeasterly corner of Avenue C and Eleventh Street; and running thence easterly and along the southerly side of Eleventh Street aforesaid, seventy-five (75) feet; thence southerly and parallel with said Avenue C one hundred and eighty-nine (189) feet and seven (7) inches, more or less, to the northerly side of Tenth Street; thence westerly, and along the northerly side of Tenth Street aforesaid, seventy five (75) feet, and thence northerly, and parallel with the said Avenue C one hundred and eighty-nine (189) feet and seven (7) inches, more or less, to the place of beginning.

All those two certain lots, pieces or parcels of land, with the buildings thereon, situate, lying and being on the northerly side of Eleventh Street, in the Eleventh Ward of the City of New York, and known and distinguished on a certain map filed by Frederick De Peyster, Master in Chancery in the office of the Register of the City and County of New York, entitled "map of two hundred and forty lots of land situate at Burnt Mill Point in the Eleventh Ward of the City of New York," by the Numbers Eighty-five (85) eighty-six (86) and are more fully bounded and described as follows: Beginning at a point on the northerly side of Eleventh Street, in said city, distant two hundred and thirty-three feet (233) easterly from the northeasterly corner of Avenue C and Eleventh Street, running thence northerly and parallel with Avenue C one hundred and three (103) feet three (3) inches; thence easterly and parallel with Eleventh street fifty (50) feet; thence southerly and parallel with Avenue C one hundred and three (103) feet three (3) inches to Eleventh street aforesaid, and thence westerly along the same fifty (50) feet to the place of beginning. Also, all those four certain lots, pieces or parcels of land situate, lying and being in the Eleventh Ward of the City of New York,

bounded and described as follows: Beginning at a point on the southerly side of Eleventh street distant one hundred and eighty-three (183) feet easterly from the easterly line of Avenue C, running thence southerly and parallel with Avenue C ninety-four (94) feet nine (9) inches to the centre line of the block, running thence easterly along said centre line one hundred (100) feet; thence northerly and parallel with Avenue C ninety-four (94) feet nine (9) inches to the southerly line or side of Eleventh street; thence westerly along the southerly line of Eleventh street one hundred (100) feet to the place of beginning.

No. 413 East Tenth Street Property.

All that certain lot, piece or parcel of ground, with the building thereon erected, which on a certain map filed by Frederick De Peyster, Master in Chancery (with his certificate endorsed thereon, dated February 1st, 1837) in the office of the Register for the City and County of New York, entitled "Map of 240 lots of land situated at Burnt Mill Point in the Eleventh Ward of the City of New Yor " consisting of one lot of land thereon designated by the number "144" (one hundred and forty-four bounded as follows, viz.:

Commencing at a point on the northerly side of Tenth Street, distant one hundred and ninety-three (193) feet southeasterly from the northeasterly corner of Avenue C and Tenth Street; running thence northeasterly along lot 145 on said map ninety-four (94) feet nine (9) inches to the centre of the block; thence southeasterly along the centre of the block twenty-five (25) feet to lot 143 on said map; thence southwesterly along said lot 143 ninety four (94) feet nine (9) inches to Tenth Street, and thence northwesterly along Tenth Street twenty-five (25) feet to the point of beginning.

Lenox Avenue and One Hundred and Sixteenth Street Property.

All those certain lots or parcels of land situate lying and being in the Twelfth Ward of the City of New York, and which taken together are bounded and described as follows: Commencing at the corner formed by the intersection of the northerly line of One hundred and sixteenth Street with the westerly side of Lenox (formerly Sixth) Avenue, running thence northerly, along said westerly line of Lenox Avenue two hundred and one (201) feet ten (10) inches to the southerly line of One Hundred and Seventeenth Street; thence westerly, along said southerly line of One Hundred and Seventeenth Street two hundred (200) feet; thence southerly and parallel with Lenox Avenue two hundred and one (201) feet ten (10) inches to the northerly line of One Hundred and Sixteenth Street; thence easterly along said northerly line of One Hundred and Sixteenth Street two hundred (200) feet to the point or place of beginning.

Being the same premises conveyed by the Metropolitan Traction Company of New York to the Lexington Avenue and Pavonia Ferry Railroad Company by deed bearing date the 15th day of January, 1894, and recorded in the office of the Register in the City and County of New York in Block Series (Conveyances) Section 7, Liber 20, at page 456, etc., subject, however, to the existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

Lexington Avenue and Ninety-ninth Street Property.

All that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of New York, bounded and described as follows:

Beginning at the northeasterly corner of Fourth Avenue and Ninety-ninth Street, running thence northwardly along the easterly line of Fourth Avenue two hundred and one (201) feet ten (10) inches to the south-

erly line of One Hundredth Street; thence eastwardly along the southerly line of One Hundredth Street four hundred and five (405) feet; thence southwardly and parallel with Fourth Avenue two hundred and one (201) feet ten (10) inches to the northerly line of Ninety-ninth Street, and thence westwardly along the northerly line of Ninety-ninth Street four hundred and five (405) feet to the point or place of beginning.

Being the same premises conveyed by the Metropolitan Traction Company, of New York, to the Lexington Avenue and Pavonia Ferry Railroad Company by deed bearing date the 15th day of January, 1894, and recorded in the office of the Register in the City and County of New York, in Block Series (conveyances), Section 6, Liber 22, at page 157.

Subject, however, to the existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

Lexington Building.

All those certain lots, pieces or parcels of land with the building or buildings thereon erected, situate, lying and being in the Twelfth Ward of the City of New York, bounded and described as follows:

Commencing on the northerly side of Twenty-fifth Street, at a point distant one hundred and seven (107) feet and six (6) inches westerly from the corner formed by the intersection of the northerly line of Twenty-fifth Street with the westerly line of Third Avenue, and running thence westerly along the northerly line of Twenty-fifth Street, one hundred and eighty-seven (187) feet and six (6) inches or thereabouts, and thence running northerly and parallel, or nearly so, with Third Avenue one hundred and ninety-seven (197) feet and five (5) inches to the southerly side of Twenty-sixth Street and thence running easterly along the southerly side of Twenty-sixth Street one hundred and eighty-six (186) feet, or thereabouts, and thence running southerly and parallel with

Third Avenue ninety-eight (98) feet and nine (9) inches to the centre line of the block between Twenty-fifth and Twenty-sixth Streets, and thence running easterly along the said centre line of the block, six (6) inches, thence running southerly and parallel with Third Avenue, ninety-eight (98) feet and nine (9) inches to the northerly line of Twenty-fifth Street, being the same premises which were heretofore conveyed by the following conveyances, viz. :

By deed of Ruth A. Brown to the Metropolitan Traction Company of New York, recorded in Block Series (Conveyances) Section 3, Liber 30, at page 128, etc.

By deeds of John D. Crimmins to the Metropolitan Traction Company of New York, recorded in Block Series (Conveyances) Section 3, Liber 31, page 57, etc., and in Section 3, Liber 21, at page 408, etc., and in Section 3, Liber 26, at page 113, etc.

By Deed of Alonzo C. Monson to the Metropolitan Traction Company of New York, recorded in Block Series (Conveyances) Section 3, Liber 29, at page 176, etc.

Subject, however, to a existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

Belt Line Repair Shops.

All that certain lot, piece or parcel of land, together with the buildings and improvements thereon, lying and being in the Twenty-second Ward of the City of New York, situate on the North side of West Fifty-third Street, between the Tenth and Eleventh Avenues, and known as lot number 768 on a certain map of John Hopper's Estate, filed in the Register's Office of the City of New York on the 31st day of December, 1864, as map No. 660 and being bounded and described as follows :

Beginning at a point on the northerly side of Fifty-third Street distant four hundred and seventy-five

(475) feet westerly from the westerly side of Tenth Avenue, and running thence westerly along said northerly side of Fifty-third Street twenty-five (25) feet; thence northerly on a line parallel with Tenth Avenue forty-eight (48) feet three and three-quarters (3¾) inches; thence southwesterly twenty-five (25) feet or thereabouts to a point in a line distant forty-four (44) feet ten (10) inches northerly from the northerly side of Fifty-third Street, and thence southerly on a line parallel with Tenth Avenue forty-four (44) feet ten (10) inches to the northerly side of Fifty-third Street to the point or place of beginning.

Being the same premises conveyed to the Metropolitan Traction Company of New York by Bertha Volkening by deed dated the 30th day of March, 1893, and recorded in the office of the Register of the City and County of New York on the 30th day of March, 1893, in Block Series (Conveyances) Section 4, Liber 21, page 283.

And also all those certain lots, pieces or parcels of land, together with the buildings and improvements erected thereon, situate, lying and being in the Twenty-second Ward, of the City of New York and bounded and described as follows:

Beginning at a point three hundred feet easterly from the southeasterly corner of Eleventh Avenue and Fifty-fourth street; thence easterly along the line of Fifty-fourth street twenty-five (25) feet; thence southerly parallel with Eleventh Avenue, through the centre of the block to the line of property now or formerly owned by Garrit H. Striker one hundred and fifty-six (156) feet; thence northwesterly along the line of said property twenty-five feet (25) feet three and one quarter (3¼) inches; thence northerly parallel to Eleventh Avenue one hundred and fifty-two (152) feet six and one quarter (6¼) inches, to the point or place of beginning, be the said several dimensions more or less.

Being the same premises conveyed by Andrew Doerrschuck and wife to the Metropolitan Traction Company, of New York, by deed dated the 6th day of March, 1893, and recorded on the 8th day of March, 1893, in Block Series (Conveyances) Section 4, Liber 20, page 296.

Chambers Street Leasehold.

All the leasehold rights of the Lessor in and to all that certain lot, piece or parcel of land situate, lying and being in the Seventh Ward of the City of New York, bounded and described as follows: Beginning at the corner formed by the intersection of the southerly line of Cherry Street with the westerly line of East Street, and running thence southerly along the westerly line of East Street one hundred (100) feet and three (3) inches; thence westerly on a line parallel (or nearly so) with the southerly line of Cherry Street two hundred and forty-five (245) feet six (6) inches; thence northerly on a line parallel (or nearly so) with the westerly line of East Street twenty-six (26) feet one (1) inch; then easterly parallel (or nearly so) with said line of Cherry Street nineteen (19) feet eleven (11) inches; thence northerly parallel (or nearly so) with the said line of East Street seventy-five (75) feet to the said line of Cherry Street; then easterly along said last mentioned line two hundred and twenty-five (225) feet to the place of beginning, and known by the Street Number 505 Cherry Street.

Also all the leasehold rights of the Lessor in and to all that certain lot, piece or parcel of land situate lying and being on Cherry Street, in said City, immediately adjoining the above described premises on the westerly side thereof, which said lot is about twenty (20) feet in width in front and rear and seventy-five (75) feet in depth on each side.

Twenty-fourth Street Leasehold.

All the leasehold rights of the Lessor in and to all those ten certain lots of ground, situate lying and being in the Sixteenth Ward of the City of New York, distinguished on a map of certain lands of Clement C. Moore, situate at Greenwich, in the City of New York, recorded in the office of the Register in and for the City and County of New York, in Liber 634 of conveyances, pages 411, by the numbers 905 (nine hundred and five) to 908 (nine hundred and eight) and 936 (nine hundred and thirty-six) to 941 (nine hundred and forty-one) all inclusive; and bounded together as follows, viz.: Southwestwardly in front by Eleventh Avenue; southwestwardly by the half distance line between Twenty-third Street and Twenty-fourth Street; northwestwardly by lot numbered on the said map 935 (nine hundred and thirty-five) and northeastwardly by the said Twenty-fourth Street.

Containing together in width along the said Eleventh Avenue and on the northwestwardly side thereof, ninety-eight (98) feet and eight (8) inches, and on the northeastwardly and southwestwardly sides thereof, two hundred and twenty-five (225) feet, be the said several measurements more or less.

4. The Lessor operates as Lessee the following described railroads and railroad routes in said City of New York and State of New York under the leases hereinafter mentioned:

LINES LEASED TO AND OPERATED BY METROPOLITAN STREET RAILWAY COMPANY.

Lease of the Bleecker Street and Fulton Ferry Railroad Company to the Twenty-third Street Railway Company.

Dated January 10th, 1876, by which all the railroads and railroad routes of the lessor in the City of

New York are leased to the lessee for the term of ninety-nine years, said lease including the railroad operated along the streets described as follows :

Commencing at Twenty-third street and Eleventh Avenue, running along Eleventh Avenue to Fourteenth Street, running thence through and along Fourteenth Street to Fourth Avenue ; and also commencing at the intersection of Fourteenth street and Hudson street and thence running Southerly and Easterly through the City upon various streets, to Fulton Ferry.

Lease of Broadway and Seventh Avenue Railroad Company to Houston, West Street and Pavonia Ferry Railroad Company.

Dated May 13th, 1890, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor and any extension of said charter, said lease including the railroad operated along the streets, described as follows :

Commencing at Fifty-ninth Street and Seventh Avenue ; running thence through and along Seventh Avenue to Broadway ; thence through and along Broadway to Fifteenth Street, and thence through and along University Place and certain other streets to Barclay street ; and thence through Barclay Street and Park Place to Broadway ; and through Seventh Avenue, from Broadway to Greenwich Avenue to McDougall Street to West Fourth Street, and through Thompson and Sullivan Streets to West Broadway ; and also from Broadway and Twenty-third Street, through Twenty-third Street to Lexington Avenue, thence through Legington Avenue to Twenty-seventh Street.

Lease of the Central Park, North & East River Railroad Company to the Metropolitan Cross-Town Railway Company and the Houston, West Street & Pavonia Ferry Railroad Company.

Dated October 14th, 1892, by which all the railroads and railroad routes of the Lessor in the City of New York are leased to the Lessee for the unexpired term of the charter of the Lessor and any extensions of said charter, said lease including the railroad operated along the streets described as follows:

From Tenth Avenue and 59th Street through Tenth Avenue, West and other Streets to the South Ferry; and also from Tenth Avenue at 59th Street along 59th Street to First Avenue; and thence through various other streets and avenues to the said South Ferry.

Lease of the Eighth Avenue Railroad Company to Metropolitan Street Railway Company.

Dated November 23, 1895, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of ninety-nine years from January 1, 1896, said lease including the railroad operated along the streets described as follows:

Commencing at or near the intersection of Vesey Street and Broadway; thence running through Vesey Street to College Place, and through College Place, Church Street and Chambers Street to West Broadway, and through West Broadway to Canal Street, and through Canal Street to Hudson Street, and through Hudson Street to Eighth Avenue, and through and along Eighth Avenue to the point where the street or road commonly called the McCombs Dam Road intersects or meets Eighth Avenue; thence through and along the said McCombs Dam Road to or near the westerly end of the bridge known as McCombs Dam bridge, with an extension or branch running from the

junction of West Broadway and Canal Street to Broadway, and also the extension of its railroad from the junction of McCombs Dam Road along Eighth Avenue to the Harlem River.

Lease of the Forty-second Street and Grand Street Ferry Railroad Company to the Metropolitan Crosstown Railroad Company and The Houston, West Street & Pavonia Ferry Railroad Company.

Dated Aprfl 6th, 1893, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor and any extensions of the charter, said lease including the railroad operated along the streets described as follows:

Commencing at the ferry at the western extremity of Forty-second Street; thence through and along Forty-second Street, with a double track to Tenth Avenue; through and along Tenth Avenue to Thirty-fourth street; through and along Thirty-fourth Street, with a double track, to Broadway; through and along Broadway to Twenty-third Street; through and along Twenty-third Street to Fourth Avenue; through and along Fourth Avenue and Union Square, with a double track, to Fourteenth Street; through and along Fourteenth Street, with a double track, to Avenue A; through and along Avenue A, with a double track, to Second Street, and thence along Avenue A, with a single track, to First Street; through and along First Street and Houston Street, with a single track, to Cannon Street: through and along Cannon Street, with a single track, to Grand Street; through and along Grand Street, with a single track, to Goerck Street, and thence through and along Grand Street, with a double track, to Grand Street ferry at the foot of Grand Street, East River; and also from the intersection of Second Street and Avenue A through and along Second and Houston Streets, with a single track,

to Goerck Street; thence through and along Goerck Street with a single track, to Grand Street to Grand Street Ferry.

Lease of the New York and Harlem Railroad Company (city line) to the Metropolitan Street Railway Company.

Dated June 11, 1896, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of nine hundred and ninety-nine years from July 1, 1896; said lease including the railroad operated along the streets described as follows:

Commencing at intersection of Park Row, Ann Street and Broadway, to Centre Street, to Grand Street and Broome Street to Bowery, to Fourth Avenue, to Forty-second Street, to Madison Avenue, to One hundred and thirty-eighth Street; also on Eighty-sixth Street from Madison Avenue to First Avenue; on First Avenue to Ninety-third Street to Astoria Ferry. Also extension on Thirty-second and Thirty-third Streets, Lexington Avenue and Thirty-fourth Streets, from Fourth Avenue to Thirty-fourth Street Ferry.

Lease of the Ninth Avenue Railroad Company to the Houston, West Street & Pavonia Ferry Railroad Company.

Dated March 12th, 1892, by which all the railroads and railroad routes of the Lessor in the City of New York are leased to the Lessee for the term of ninety-nine years, said lease including the railroad operated along the streets described as follows:

Commencing at the intersection of Broadway and Fulton Street, runs through Fulton Street to Greenwich Street; thence through and along Greenwich Street to Ninth Avenue; thence through and along Ninth Avenue and Columbus Avenue to the Grand Boulevard; thence through and along the said Boule-

vard to Amsterdam Avenue (formerly called Tenth Avenue), and thence along Amsterdam Avenue to Manhattan Street, returning through Amsterdam Avenue, the Boulevard, Columbus Avenue, Ninth Avenue, Gansvoort Street and Washington Street to Fulton Street; thence through Fulton Street to Broadway to the place of beginning; also on Fifty-third Street from Broadway to Ninth Avenue.

Lease of the Second Avenue Railroad Company to the Metropolitan Street Railway Company.

Dated January 28th, 1898, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor and any extensions of said charter, said lease including the railroad operated along the streets described as follows:

Upon First Avenue and Second Avenue, through various streets and avenues in the City of New York to Peck Slip with extensions and connections from Eighth Avenue through the transverse road in Central Park, along Eighty-fifth Street, connecting with Madison Avenue.

Also extension from Bowery through Worth Street to Broadway.

Also an extension from Second Avenue and Tenth Street, through Tenth Street and Astor Place to Broadway.

Lease of Sixth Avenue Railroad Company to the Houston, West Street & Pavonia Ferry Railroad Company.

Dated February 1st, 1892, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of eight hundred years, said lease including the railroads operated along the streets described as follows:

Commencing at the intersection of Fifty-ninth Street

and Sixth Avenue, running thence southerly along Sixth Avenue to Carmine Street; thence through Carmine Street to Varick Street; thence through Varick Street to Canal Street; thence through Canal Street to Broadway; and also from the intersection of West Broadway and Canal Street; thence through and along West Broadway to Vesey Street; thence through Vesey Street to Broadway; and also through Church Street to Chambers Street, and through Chambers Street to Broadway; and also upon and along Lenox Avenue from One Hundred and Tenth Street to the Harlem River, also on West Third Street from Carmine to Sullivan Streets. Also on Fifty-third Street from Sixth Avenue to Seventh Avenue.

Lease of the Twenty third Street Railway Company to The Houston, West Street & Pavonia Ferry Railroad Company.

Dated April 25, 1893, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor, and any extension of said charter, said lease including the railroad operated along the streets described as follows:

Upon Twenty-third Street from the North to the East River, and upon Second Avenue from its intersection with Twenty-third Street to Twenty-ninth Street, and thence through Twenty-ninth Street, and also through Twenty-eight Street to First Avenue, and thence through First Avenue to Thirty-fourth Street.

Lease of the Third Avenue Railroad Company to Metropolitan Street Railway Company.

Dated April 13th, 1900, by which all the railroads and railroad routes of the Lessor in the City of New York are leased to the Lessee for the term of nine hundred and ninety-nine years, said lease including

the railroad operated along the streets described as follows:

Beginning at the intersection of Park Row and Broadway; thence extending along Park Row, the Bowery, Third Avenue to the Harlem River; also extending from the North River at the foot of 130th Street, thence through 130th Street, Manhattan Street and 125th Street to the East River; also extending from 125th Street through Amsterdam Avenue to the terminus of said Avenue; and also on One Hundred and Thirtieth Street from Third Avenue to a point at or near Lexington Avenue.

5. The said railroads and railroad routes owned by the Lessor are subject to sundry mortgages, securing outstanding bonds.

6. The companies whose lines are leased by the Lessor or a majority of whose capital stock is owned by the Lessor or owned by a Company whose lines are leased by the Lessor, are hereinafter referred to collectively as "Subsidiary Companies."

7. The Lessor's authorized capital stock is $52,000,000, all, or substantially all, of which is issued and outstanding.

8. The Lessee owns and operates street railroads and railroad routes in that portion of the County of Westchester, in the State of New York, adjoining the Borough of The Bronx of the City of New York, described as follows:

Beginning at North Third Avenue and Depot Place in the City of Mount Vernon, running thence northerly upon said Avenue to North Street.

Beginning at the intersection of North Street and North Third Avenue, running thence northerly through North Third Avenue to its intersection with Lincoln Avenue or White Plains Road.

Beginning at the intersection of East Lincoln Avenue, or White Plains Road, and North Third Avenue, thence easterly upon White Plains Road to North Columbus Avenue, or the White Plains Road, thence northerly upon North Columbus Avenue, or White Plains Road, to Burke's corners, opposite the New York Infant Asylum.

The Lessee also owns additional routes as follows :

Beginning at a point on Fourth Street in the Village of North Pelham at its intersection with the easterly boundary line of the City of Mt. Vernon, thence easterly along said Fourth Street and Winyah Avenue to the easterly boundary line of the Town of Pelham.

Beginning at a point on the White Plains Road at its intersection with the northerly line of the Town of Scarsdale, running thence southerly along White Plains Road to the northerly line of the Town of Eastchester.

Beginning at a point on the White Plains Road at its intersection with the northerly line of the Town of Eastchester, being the southerly line of the Town of Scarsdale, thence southerly along the White Plains Road to the northerly line of the City of Mt. Vernon. Also along the line which turns westerly from or near the school-house in upper New Rochelle, from the easterly boundary line of the Town of Eastchester, westerly along said road to the White Plains Road, thence southerly along the White Plains Road to Midland Avenue, or the road which is the continuation of Midland Avenue, thence southerly along said Midland Avenue, or said road which is a continuation of Midland Avenue, to Main Street and thence westerly along Main Street from said Midland Avenue, or its said continuation, to or near the depot of the New York & Harlem Railroad in the Village of Tuckahoe.

9. The Lessee proposes to construct or cause the construction of other lines of street surface railroads on routes owned or leased by it, in said portion of said County of Westchester, and also in said Borough of the Bronx, in the City of New York.

NOW, THEREFORE, the said Metropolitan Street Railway Company, party of the first part, in consideration of the covenants and agreements hereinafter contained to be kept and performed by the party of the second part, has granted, leased, and demised, and does by these presents grant, lease and demise to the Interurban Street Railway Company, party of the second part, and its successors and assigns, all the railroads and railroad routes of the Lessor, including those hereinbefore described, and all railroads and railroad routes which the Lessor may acquire or construct during the term of this lease, together with all the branches, connections, extensions, franchises, rights, powers and privileges of the Lessor to maintain, construct and operate railroads and railroad routes, and all renewals and extensions thereof; all the parcels of real estate hereinbefore described, and all other real estate of the Lessor, and the buildings and improvements thereon; also all the benefits and rights arising from all and any contracts, leases and agreements which the Lessor now has or to which it may be hereafter entitled, all of which franchises, rights, powers, privileges, contracts, leases, agreements and other property so leased and demised are subject to the various burdens and conditions by which they are held by the Lessor; all power houses, car houses, buildings, poles, trolleys, conduits, feeders, cables, wires and machinery for the production and distribution of electrical and other power, and all cars, equipment, tools and other personalty; including not only all of such property real and personal of the Lessor on the date hereof but all subsequent additions thereto as the result of purchase, or of merger or consolidation with any other corporation, or otherwise.

TO HAVE AND TO HOLD the same and each and every part thereof unto the Lessee and its successors and assigns for the full term of nine hundred and ninety-nine (999) years from the day of the date hereof as the same may have been or may be acquired by the Lessor,

to be used, maintained and operated by the Lessee; and, subject to the provisions of this agreement, the Lessor does hereby grant to the Lessee the control of the expenditure of any moneys belonging to the Lessor at the time of the taking over of the property of the Lessor under this lease, which are in the Treasury of the Lessor or to which the Lessor is or may be entitled, and the control of all rights of action for the collection of money, or for the enforcement of rights or privileges for the construction, maintenance and operation of railroads which are proper for such construction, maintenance or operation.

THIS INDENTURE FURTHER WITNESSETH, that the parties hereto have further covenanted and agreed and do hereby covenant and agree each with the other as follows:

I.—The Lessee shall at all times during the continuance of this lease maintain, manage, use, operate and keep in good working order, condition and repair at its own expense, all of said demised lines of railroad and other property and all extensions and branches thereof and all additions thereto.

II.—The Lessee shall pay, satisfy and discharge all municipal, county, state or government taxes and assessments, or other charges of any description whatever which during the term hereby granted may be imposed upon the property hereby demised or any part thereof, or upon any additions thereto and extensions thereof, or upon the Lessor or its franchises or business by reason of the property and franchises hereby demised, or by reason of any increase thereof or additions thereto or resulting from the use and operation by the Lessee of the property hereby demised, or of any extensions thereof or additions thereto, or from the construction of other lines in connection therewith; the intention of the parties being that the rents hereinafter agreed to be paid by the Lessee

shall not be in any wise impaired or diminished by any assessment, tax or charge upon the demised property, real or personal or upon any additions thereto, or extensions thereof, or upon the Lessor or Lessee by reason thereof. The Lessee shall not, however, be required hereunder to pay any lien, tax, assessment or charge so long as it shall in good faith contest the legality and validity of the same, unless the payment thereof be necessary to protect the demised property or some part thereof from forfeiture or sale.

III.—The Lessee shall also from time to time pay or cause to be paid all rentals and other sums of money which are or may be or become due or payable under or by reason of any leases and other contracts to which the Lessor is a party or to which any of the demised property is or may be subject, and the Lessee hereby assumes all the obligations of the Lessor under all such leases and contracts, and the Lessee agrees to pay all interest upon the funded debt of the Lessor and other fixed charges of the Lessor, provided that the Lessee shall not be required to pay the principal of any funded obligations of the Lessor or of its subsidiary companies except as hereinafter provided. All rentals and other payments made, as in this and the preceding article provided, shall be apportioned between the periods respectively preceding and succeeding the date of taking possession hereunder.

IV.—The Lessee shall also pay to the Lessor by way of rental for the railroads and property hereby demised and as part consideration for the other benefits to the Lessee hereunder accruing, an amount equal to seven per cent. per annum upon the existing capital stock of the Lessor and upon such additional capital stock of the Lessor as may hereafter be issued with the written consent of the Lessee as hereinafter provided. Such rental shall be paid in equal quarterly instalments upon the fifteenth day of January, April, July and

October, of each year, beginning with the fifteenth day of July, 1902. The Lessor may pay out of its existing surplus a dividend of one and three-quarters per cent. on the fifteenth day of April, 1902. The rentals herein provided for are based upon the present issued capital stock of the Lessor, viz.: $52,000,000, and such rentals shall not be increased in case of the issue of additional stock by the Lessor, unless such increase be expressly consented to in writing by the Lessee; and the Lessor agrees that it will not create or issue any stock in excess of said sum of $52,000,000, without such written consent of the Lessee. It is the intention of the parties hereto that all of said rental shall be applied to the payment of dividends at the rate of seven per cent. per annum payable quarterly, upon said $52,000,000 of capital stock of the Lessor and upon any additional stock that may be issued with the consent of the Lessee as herein provided. The Lessee may at its option pay to any stockholder of the Lessor the proportionate part of any quarterly instalment of such rental which would be payable upon the stock held by such stockholder and upon the written request of the Lessor the Lessee shall pay any such quarterly instalment of rental hereunder to the stockholders of the Lessor as named in a certified list thereof to be supplied by the Lessor. The Lessee hereby guarantees to every present and future holder of said $52,000,000 of stock of the Lessor and of any additional stock of the Lessor which may be issued with the consent of the Lessee as herein provided, that dividends upon such stock at the rate of seven per cent. per annum shall be paid during the term of this lease in equal quarterly instalments upon the days of the year aforesaid, and the Lessee consents that the Lessor shall issue to the holders of such stock, stock certificates which shall recite such guaranty. The Lessee shall, however, be deemed to have complied with its guaranty as to any quarterly instalment of said dividend if it shall pay the amount thereof to the Lessor.

V.—The Lessee will replace any part of the demised property or of any additions thereto which may be destroyed by fire or other causes, and upon the expiration or earlier termination of this lease will deliver up said demised railroads and other property and all additions thereto in good order and repair, and shall likewise surrender the franchises, rights and privileges aforesaid unimpaired by any act or default of the Lessee; provided, however, that nothing herein contained shall require the Lessee to transfer to the Lessor any property absolutely transferred to the Lessee as hereinafter provided or any property which has become inoperative or has been destroyed. The Lessee may abandon or sell any track, real estate, equipment, franchise, rights or other property of the Lessor, which in the opinion of the Lessee, it is inexpedient to retain, provided that the continuity of no main line of railroad shall be broken by any such sale or abandonment, and provided such abandonment or sale shall not be in violation of the provisions of any mortgage or contract of the Lessor. The Lessee may from time to time in its discretion change or rechange the location or character of the whole or any part of any present or future line of railroad of the Lessor, or the motive power now used or hereafter used upon any such line, or the road-bed of any such line. The proceeds of the sale or exchange of any property of the Lessor which shall be sold or exchanged by the Lessee shall be reinvested in improvements upon the demised property or in other property which shall belong to the Lessor.

VI.—The Lessee shall save the Lessor harmless from all expenses in the prosecution or defense of any action or legal proceeding which shall be based upon any cause of action which may arise or may have arisen from the operation of the railroad or railroads of the Lessor, and will also pay any judgment that may be recovered against the Lessor upon any such cause of action, provided however that any taxes or other liqui-

dated claims accruing prior to the date on which the Lessee shall take possession hereunder or resulting from the business of the Lessor prior to such date, shall be paid from the fund of $23,000,000 hereinafter provided to be paid by the Lessee. All such taxes and liquidated claims shall be apportioned between the periods respectively preceding and following said date.

VII.—The Lessor shall, whenever required by the Lessee during the continuance of this lease, do and perform any and every corporate act which may be necessary, useful or appropriate to secure to the Lessee, or its successors, the full enjoyment of the demised property, including the existing lines of railroad, and any and all connections, extensions, and branches, and the right to construct, maintain and operate any connections, extensions or branches which the Lessee may desire to construct or operate, and of every franchise, right, easement, power and privilege connected therewith or appertaining thereto, including any change of motive power that the Lessee may deem desirable, and of all other rights and powers now possessed, or which may be hereafter possessed, by the Lessor, and it will maintain and extend its corporate organization for the purposes hereof, and will apply for all such connections, extensions and branches and changes of motive power as the Lessee may reasonably demanded, all expenses incurred therefor by the Lessor to be borne by the Lessee; provided, however, that the expenses of maintaining the corporate organization of the Lessor shall not exceed the sum of $10,000 annually. The Lessee shall likewise maintain and extend its corporate existence for the purposes hereof.

VIII.—The Lessor shall, from time to time, upon the request of the Lessee, give, make, execute and deliver such further and other evidences and assurances, papers and instruments, as may be necessary or proper

to carry into full force and effect all the objects and purposes of this Indenture, and the Lessor covenants that it is lawfully possessed of the premises hereby demised and has full power to demise and lease the same as aforesaid subject to the mortgages, leases and contracts hereinbefore recited.

IX.—The Lessee shall at all times during this lease have the full and exclusive right to manage, use and control the demised property, and to regulate and determine the rates of toll and charges of transportation over the whole or any part of said demised lines of railroad, and to charge and collect the same and appropriate the same to its own use, and shall have, use and enjoy all the rights, powers and authority of the Lessor in that behalf, and all rights, powers, easements and privileges now possessed or which may hereafter be acquired by the Lessor, necessary or convenient to the construction, maintenance, use, operation, possession and enjoyment of said railroad or railroads, and any and all connections, extensions and branches thereof which can or may be lawfully exercised and enjoyed under its charter and the laws applicable thereto, in, about, or in connection with said demised property, and in the maintenance and operation thereof.

X.—In order to enable the Lessee to beneficially enjoy the property, rights, privileges and benefits herein mentioned and hereby demised, the Lessor appoints the Lessee its attorney irrevocable, with full power and right, at the expense of the Lessee, to use the name of the Lessor in and about the maintenance, operation and use of the demised property, with power to make any and all contracts in proper furtherance of the objects herein set forth, with any person or corporation in the name of the Lessor, and under its corporate seal or otherwise, and in its name and under its corporate seal to make and file certificates, apply for and receive consents, and take all necessary proceedings for the construction, maintenance and

operation of such extensions or branches of said railroad or railroads as said Lessee shall desire, and generally to do all other acts and things in and about the premises which the Lessor might lawfully do, but at the expense of the Lessee, and to use the name and seal of the Lessor in and about any legal proceedings and suits, either at law or in equity, as to the Lessee may seem necessary, requisite or proper in carrying out the objects and intent of this indenture.

XI.—The Lessee shall have all the rights, power and authority over all lines of railroad and other property now operated by the Lessor under lease, which the Lessor has or is entitled to exercise, except in so far as such powers, rights and authority are not transferable, and in all such cases the Lessor shall exercise its rights, powers and authority as shall be directed by the Lessee, provided that in no case shall the Lessor be required to do any act which shall be contrary to law or in violation of any contract. All the income which the Lessor shall receive, or shall be entitled to receive, from any of its leased lines, and from any stocks, bonds and other securities now or hereafter held by it and from any and every other source whatsoever, shall be the property of the Lessee. The Lessor shall not sell or otherwise dispose of any shares of stock of other corporations now or hereafter held or owned by it, except by the written consent of the Lessee, and it shall vote, and issue proxies to vote, all such shares of stock as shall be directed in writing by the Lessee, provided that the Lessor shall not be required to act contrary to law or the provisions of any mortgage or other contract.

For further assuring unto the Lessee the use of the property and rights hereby demised the Lessor hereby assigns and transfers to the Lessee the Lessor's equity in all shares of stock of other railroad companies acquired by it under its lease and agreement with the Third Avenue Railroad Company dated April 13, 1900, that is to say, the ownership of such shares of stock,

subject to the prior lien of the mortgage of the Third Avenue Railroad Company to the Morton Trust Company dated May 15, 1900, to secure an issue of $50,000,000 face value of Four Per Cent. First Consolidated Mortgage Bonds of the Third Avenue Railroad Company and of any prior mortgages which may be a lien thereon. The Lessee covenants that it will not transfer, assign or encumber the shares of stock acquired under said lease of the Third Avenue Railroad Company.

XII.—The Lessee shall furnish to the Lessor the sum of twenty-three million dollars ($23,000,000) for the purpose of paying the unfunded debt of the Lessor, and providing for expenditures for improving, extending and equipping the lines of railroad and other property of the Lessor and its subsidiary companies. Such sum shall be furnished and paid in the following manner and in the following instalments:

(a.) At least five million dollars ($5,000,000) of said sum shall be paid to the Lessor within forty days after the approval of this lease by the stockholders of the Lessor. Such sum and any subsequent sums paid by the Lessee shall be applied to the payment of the unfunded debt of the Lessor until the same has been paid in full.

(b.) Further payments shall be made from time to time in amounts of not less than one million dollars ($1,000,000), upon thirty days' notice in writing by the Lessor to the Lessee, as required for the purposes hereinafter mentioned, and the same as well as any portion of said payment of at least $5,000,000 not required to pay the unfunded debt of the Lessor, shall be used to provide for the improvement, extension and equipment of the lines and other property of the Lessor and its subsidiary companies.

XIII.—All unfunded debt, rentals and taxes (subject to apportionment as hereinbefore provided) and

other liquidated claims (excluding funded debt), existing against the Lessor on the date when the Lessee takes possession hereunder shall be paid from said sum of $23,000,000, except to such extent as funds for any of said purposes shall have been or may be provided from moneys and other assets on hand, and from other sources. All claims of the character hereinbefore described existing on said date against companies a majority of whose stock is owned by the Lessor shall be acquired by means of said fund of $23,000,000, and such claims shall, so far as practicable, be kept alive for the protection of the parties hereto. Only such part of said fund of $23,000,000 as shall remain after the payment of the debts and claims hereinbefore mentioned shall be used for the improvement, extension and equipment of the lines owned, leased or controlled by the Lessor.

XIV. The Lessor shall provide for the payment or extension of its present and future funded debt and that of its subsidiary companies and, subject to the provisions hereof, the Lessor or any subsidiary company shall have the right to extend, refund or consolidate any of its funded obligations; or to issue new securities to retire its funded obligations; but in every such case the Lessee shall have the following privileges, in so far as they may be lawfully conferred by the Lessor:

(a) To purchase any new securities or extended obligations at the same price and upon the same terms as those at which the Lessor is willing to permit the same to be purchased or held by others; or

(b) At the option of the Lessee, before the Lessor, or any subsidiary company shall sell any securities or extend any maturing obligations, it shall give to the Lessee an opportunity of furnishing to the Lessor or to the subsidiary com-

pany, as the case may be, the money intended to be raised by the sale of securities or required to pay the maturing obligations, and to receive therefor obligations of the Lessor, or of the subsidiary company, as the case may be, bearing interest at the rate of four per cent. per annum, and secured by mortgage upon its property and maturing in such period as the Lessee may determine, which shall not be less than ten years nor more than one hundred years thereafter. The Lessor shall not, however, be required hereunder to give to the Lessee any rights with reference to the funded debt of any subsidiary company, except in so far as such rights may at the time exist in favor of the Lessor.

(c) In case the Lessor shall, as it may, create a refunding mortgage to secure an issue of refunding bonds to retire, acquire or refund the existing funded debt of the Lessor and part or all of the funded debt of its subsidiary companies, then the Lessor may from time to time issue such refunding bonds to retire, acquire or refund the funded debt of the Lessor or of any of its subsidiary companies, provided the interest charges of the Lessor or of the subsidiary company, as the case may be, are not thereby increased, but the Lessor shall not sell any such refunding bonds or offer them for sale or exchange, unless by the consent of the Lessee, without first offering them to the Lessee at the same price and upon the same terms as those at which the Lessor is willing to permit the same to be purchased or received by others.

If the Lessor shall fail to comply with any of the foregoing covenants on its part, and the Lessee shall pay the principal of any of the obligations of the Lessor or of any subsidiary company, such obligations shall not be deemed to be paid or extinguished, but shall in the hands of the

Lessee be deemed to be valid outstanding obligations and secured in all respects by the mortgage, if any, securing the same; and the Lessee shall be subrogated to all rights of the original holders of said obligations.

XV.—The Lessor shall not (except to such extent as may be necessary to comply with existing contracts), without the consent of the Lessee, increase, or suffer any increase of, its funded debt and the funded debt of any of the subsidiary companies, nor shall the Lessee, except in the manner herein provided, create or permit the creation of, any funded debt by the Lessor or by any of the subsidiary companies.

The intention of this agreement is that the Lessee shall pay not only the fixed charges of the Lessor and the rental herein provided to be paid, but also all sums of money properly chargeable to current maintenance and operation, but if after the expenditure of such part of said sum of $23,000,000 as shall be available for additional equipment, improvements and extensions, it shall be deemed expedient by the Lessee to extend the lines of railroad hereby demised or the lines of railroad of any subsidiary company, or to construct any branches of any such lines, or to provide any additional and increased equipment for, or to make any change of motive power upon, or any radical change in the construction, location or character of, any such lines, then such expenditures shall be provided for as follows :

(a.) The Lessee shall deliver to the Lessor a written statement of the proposed expenditures stating the approximate amount thereof and the purposes for which they are to be made.

(b.) If the parties hereto shall not within twenty days thereafter agree that such expenditures are advisable and are properly chargeable to capital account, and shall not further agree upon the nature and amount of the securities to be issued by the Lessor to

provide for such expenditures, then the questions upon which the parties shall have failed to agree shall be submitted to arbitration in the manner hereinafter provided.

(c.) When such questions have been agreed upon by the parties or determined by arbitration, then the Lessee shall provide the moneys required for the capital expenditures so agreed upon or determined, and the Lessor shall issue to the Lessee therefor such securities, whether stock, bonds or other obligations, as shall have been fixed by such agreement or arbitration and at the price and upon the terms so fixed.

(d) If the Lessor shall fail, in respect of any questions relating to capital expenditures proposed by the Lessee as hereinbefore provided, either to come to an agreement with the Lessee or to submit the questions in difference to arbitration in the manner herein provided, and such default shall continue for thirty days, or if the arbitrators or a majority of them shall fail to decide any questions submitted to them within sixty days after their appointment, or if the Lessor shall fail to comply with any decision of the arbitrators or to carry out any agreement with respect to the issue of securities for capital expenditures, then the Lessee shall be entitled to make the expenditures specified in said statement or fixed by agreement or by arbitration, as the case may be, and shall have a claim therefor against the Lessor and the Lessee shall be entitled to issue therefor in the name of the Lessor, obligations of the Lessor bearing interest at the rate of four per cent. per annum, payable semi-annually and maturing on such date as the Lessee shall determine, which shall not be less than ten years nor more than one hundred years thereafter. Any such obligations shall be subject to the provisions hereof relative to the funded debt of the Lessor, and the Lessee shall in no event be re-

lieved from its obligation to pay seven per cent. per annum upon the capital stock of the Lessor.

Nothing herein contained shall prevent the Lessee from arranging for the extension, consolidation or refunding of any funded debt of the Lessor or of its subsidiary companies or from advancing money to the Lessor or any subsidiary company, or purchasing stock of the Lessor or of any subsidiary company, for any expenditure chargeable as herein provided to capital account or for any purpose not herein otherwise provided for, upon such terms and upon such security as may from time to time be approved by the Boards of Directors of the parties hereto ; provided, however, that the Lessee shall in no event be relieved from paying the guaranteed dividend of seven per cent. upon the amount of the capital stock of the Lessor and the other fixed charges of the Lessor, as herein provided. Nothing herein shall require the Lessor to sell to the Lessee any stock which it may hereafter create without having first recognized any rights to purchase the same which may at the same time exist in favor of the stockholders of the Lessor.

XVI.—In consideration of the premises and of said sum of $23,000,000 agreed to be paid by the Lessee and of the assumption by the Lessee of the obligations of the Lessor as hereinbefore provided, the Lessor hereby sells, assigns, transfers and sets over unto the Lessee, its successors and assigns, its holdings of the shares of the capital stock of the Third Avenue Railroad Company, the Central Park North and East River Railroad Company, the Forty-second and Grand Street Ferry Railroad Company, the Central Crosstown Railroad Company, the Second Avenue Railroad Company, the Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company, and of the Second Mortgage Bonds of the Metropolitan Crosstown Railway Company, and of the Income Bonds of the Forty-Second Street, Manhattanville and St. Nicholas Avenue Railway Company, and such other

shares of stock and bonds of other corporations as it may own which are not pledged under any mortgage or deed of trust; and also all claims which the Lessor has or may have against any of its subsidiary companies for any moneys it has advanced or may advance to, or has expended or may expend in equipping or improving the property of, any of such companies. If the Lessee shall acquire hereunder a majority of the stock of any subsidiary corporation it shall not part with the same unless the railroads of such corporation shall at the time be under lease to the Lessor. The Lessor shall furnish the Lessee upon demand a schedule of the property by this article conveyed. The Lessor covenants that in lieu of the claims for moneys advanced and to be advanced to subsidiary companies, it will, at the option of the Lessee, deliver to the Lessee an equal amount of refunding bonds or other obligations of the Lessor bearing interest at the rate of four per cent. per annum. Nothing herein contained shall prevent the respective boards of directors of the parties hereto from agreeing from time to time upon changes in the amount and character of the securities and claims to be conveyed to the Lessee as herein mentioned, provided the aggregate amount thereof be not increased, and the Lessor may at its option hold a proportionate part of any of said securities and claims as security for the payment by the Lessee of any unpaid portion of said sum of $23,000,000 to be paid by the Lessee, as hereinbefore provided, but as such payments are made, the Lessee may require the delivery of a proportionate part of the securities and claims so withheld.

XVII.—In no event shall the stockholders of the Lessee or of the Lessor be held to any individual liability as stockholders for any default, damages or other breach of obligation, whether of this lease or of any instrument made in pursuance thereof by either party thereto or for any claims or demands of any nature by either of the parties hereto against the other.

XVIII.—Nothing contained in this indenture shall prevent the consolidation or merger with or sale to the Lessee, or, subject to the provisions hereof, to the Lessor, of the railroad and property of any other railroad company or any consolidation or merger of the Lessee or, subject to this indenture, of the Lessor with any other corporation or any conveyance or transfer by the Lessor, subject to this indenture, of its property or any lawful conveyance, mortgage, transfer or lease by the Lessee of its property, including its leasehold interest in the demised premises, provided that no such transfer or lease shall be made without the consent of the Lessor and that the Lessee shall in no event be relieved without the consent of the Lessor from any of its obligations under this agreement; and further provided that, anything herein to the contrary notwithstanding, this lease shall not be assignable or enure to the benefit of the Lessee's successors and assigns, except to such extent as may be lawful under the laws of the State of New York as now or hereafter in force.

XIX.—In the event of differences arising between the Lessor and Lessee, growing out of the operation of the leased property by the Lessee, or otherwise under this indenture the same shall be submitted to the arbitration of three disinterested persons, one of whom shall be chosen by each of the parties hereto, and the third by the two so chosen, and the award and finding of such arbitrators, or of any two thereof, shall be final and conclusive of any question so submitted to them. The arbitrators may award damages for the breach of any covenant, or direct reparation for any such breach, or may direct the performance of any covenant, and if the arbitrators shall make such award, the party so declared in default shall have a reasonable period within which to perform or comply with the award of said arbitrators, or to remedy the grievance complained of before such default or breach shall operate as a forfeiture. In case an arbitration is not otherwise arranged, either party desiring such submission to

arbitration shall notify the other party in writing of the matter which it desires to submit to arbitration. Within ten days thereafter, the party thus notified shall name its arbitrator, and notify the other party of such selection. Thereupon the party demanding such arbitration shall within ten days after the receipt of such notification select and name its arbitrator, and notify the other party thereof, and the arbitrators thus selected shall immediately proceed to select the third arbitrator as aforesaid, and with him to consider and determine all matters submitted.

XX.—Unless some other date be hereafter agreed upon in writing between the parties hereto, the first day of April, 1902, shall, for the purposes of this lease, be deemed to be the date on which the Lessee takes possession hereunder, whatever be the actual date thereof.

XXI.—In case the Lessee shall fail at any time to pay the rent provided for in this indenture of lease, or any part thereof, as the same shall accrue, or shall fail at any time to keep and perform any of the agreements or covenants contained in this indenture of lease, and any such default in the payment of rent or in the performance of the covenants hereof shall continue for the period of twelve months after written demand and notice from the Lessor to the Lessee, then and in any such case, at the option of the Lessor, the estate hereby demised shall cease and determine, and all right, title and interest of the Lessee in the railroads and premises hereby demised and the leases hereby assigned, shall absolutely cease and determine; and the Lessor shall thereupon become and be entitled to re-enter into and upon the railroads and premises hereby demised, and from thenceforth to have, hold, possess and enjoy the same, and every part thereof, as of its first and former estate therein, anything to the contrary herein contained notwithstanding, which right shall not be affected by any waiver of

a prior default by implication or agreement, and no re-entry by the Lessor shall impair the claims of the Lessor for any retails and other payments hereunder which shall be due and unpaid. The right of re-entry for default shall not, however, extend to any of the property hereby transferred absolutely to the Lessee.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate by their proper officers and their corporate seals to be hereunto affixed and attested by their respective secretaries the day and year first above written.

METROPOLITAN STREET RAILWAY COMPANY,
{ CORPORATE SEAL. } by H. H. VREELAND,
President.

Attest:
CHARLES E. WARREN,
Secretary.

INTERURBAN STREET RAILWAY COMPANY,
{ CORPORATE SEAL. } by T. P. FOWLER,
President.

Attest:
ROBERTS WALKER,
Secretary.

STATE OF NEW YORK, } ss.:
County of New York, }

On this fourteenth day of February, in the year one thousand nine hundred and two, before me personally came Herbert H. Vreeland and Charles E. Warren, to me known, who, being by me severally duly sworn, did depose and say that he, the said Herbert H. Vreeland, resided in the city of New York, in the State of New York; and that he, the said Charles E. Warren, resided in the city of New York, in the State of New York; and

that he, the said Herbert H. Vreeland, is the President of the Metropolitan Street Railway Company, the corporation described in and which executed the foregoing instrument, and that he, the said Charles E. Warren, is the Secretary thereof; that they knew the seal of the said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that they signed their names thereto as President and Secretary, respectively, by like order.

SHARON GRAHAM,
Notary Public,
New York County.

{NOTARIAL SEAL.}

STATE OF NEW YORK, }
County of New York, } ss.:

On this fourteenth day of February, in the year one thousand nine hundred and two, before me personally came Thomas P. Fowler and Roberts Walker, to me known, who being by me severally duly sworn, did depose and say that he, the said Thomas P. Fowler, resided in the city of New York in the State of New York, and he, the said Roberts Walker resided in the city of New York in the State of New York, and that he, the said Thomas P. Fowler, is the President of the Interurban Street Railway Company, the corporation described in and which executed the foregoing instrument, and that he, the said Roberts Walker, is the Secretary thereof; that they knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that they signed their names thereto as President and Secretary, respectively, by like order.

WILBUR L. BALL,
Notary Public, 11,
New York County.

{NOTARIAL SEAL.}

In the Matter of the Contract of Lease Dated February 14, 1902, Between the Metropolitan Street Railway Company, as Lessor, and the Interurban Street Railway Company, as Lessee.

CERTIFICATE OF SECRETARY OF LESSOR AND LESSEE RESPECTIVELY AS TO APPROVAL OF LEASE BY STOCKHOLDERS.

I, CHARLES E. WARREN, the Secretary of the Metropolitan Street Railway Company, hereby certify that the foregoing contract of lease has been approved by the votes of stockholders of the Metropolitan Street Railway Company, owning at least two-thirds of the capital stock of said company, such stock having been represented and voted upon in person or by proxy at a meeting called separately for the purpose upon a notice stating the time, place and object of the meeting, mailed at least thirty days previously to each stockholder at his post-office address, and also published at least once a week for four successive weeks in a newspaper printed in the County of New York, City of New York, where said corporation has its principal office.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said corporation this 20th day of March, 1902.

CHARLES E. WARREN,
Secretary of the Metropolitan Street Rail-
Company.

[Corporate Seal.]

I, ROBERTS WALKER, the Secretary of the Interurban Street Railway Company, hereby certify that the foregoing contract of lease has been approved by the votes of stockholders of the Interurban Street Railway Company owning at least two-thirds of the capital stock of said company, such stock having been represented and

voted upon in person or by proxy at a meeting called separately for the purpose upon a notice stating the time, place and object of the meeting, mailed at least thirty days previously to each stockholder at his post-office address, and also published at least once a week for four successive weeks in a newspaper printed in the County of Westchester, in which County said corporation has its principal office.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said corporation this 20th day of March, 1902.

ROBERTS WALKER,
Secretary of the Interurban Street Railway Company.

[Corporate Seal.]

STATE OF NEW YORK,
City and County of New York, } ss.:

On this 20th day of March, 1902, before me personally came Charles E. Warren and Roberts Walker, to me known and known to me to be the persons described in and who executed the above certificates respectively and they severally acknowledged to me that they executed such certificates.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal this 20th day of March, 1992.

SHARON GRAHAM,
Notary Public,
New York County.

[Notarial Seal.]

Filed and recorded in the Office of the Clerk of the County of Westchester, on April 8, 1902, at 2:17 p. m.

Filed and recorded in the Office of the Clerk of the County of New York, on April 8, 1902, at 2:24 p. m.

Filed and recorded in the Office of the Secretary of State of the State of New York on April 8, 1902, at 4:35 p. m.

Schedule B, Referred to in Petition of Metropolitan Street Railway Company.

Exhibit D.

Four Per Cent. Refunding One Hundred Year Gold Mortgage Bonds.

METROPOLITAN STREET RAILWAY COMPANY

TO

MORTON TRUST COMPANY, Trustee.

MORTGAGE AND DEED OF TRUST.

DATED MARCH 21, 1902.

METROPOLITAN STREET RAILWAY COMPANY.

MORTGAGE AND DEED OF TRUST.

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CONSENT OF BOARD OF RAILROAD COMMISSIONERS 117

THIS INDENTURE, dated the 21st day of March, in the year nineteen hundred and two, by and between the METROPOLITAN STREET RAILWAY COMPANY, a corporation organized and existing under the laws of the State of New York (hereinafter called the "Railway Company"), party of the first part, and the MORTON TRUST COMPANY, also a corporation organized and existing under the laws of the State of New York, as Trustee (hereinafter called the "Trustee"), party of the second part:

Incorporation of Railway Company.

WHEREAS, the Railway Company, party of the first part, is a street surface railroad company, organized and existing under the laws of the State of New York, and formed by the merger and consolidation, at divers times, of the Houston, West Street and Pavonia Ferry Railroad Company, the Broadway Railway Company, the South Ferry Railroad Company, The Metropolitan Crosstown Railway Company, The Lexington Avenue and Pavonia Ferry Railroad Company and The Columbus and Ninth Avenue Railroad Company, all said Companies having been street surface railroad companies organized and existing under the laws of the State of New York;

Ownership of railroad routes.

AND WHEREAS, the Railway Company is the owner in fee simple of certain street surface railroads, railroad franchises and railroad routes in the County of New York, in the City of New York, State of New York, including the railroads, properties and franchises of the several corporations so merged and consolidated as aforesaid;

Possession of leased railroads.

AND WHEREAS, the Railway Company is in possession of and is operating divers other street surface railroads in said City under leases from the companies owning the same, and is also the owner of certain rights, privileges and franchises to use the railroads, tracks, routes and franchises of street surface railroad

companies, all hereinafter more particularly referred to and described;

Acquisition of bonds of railroad companies.

AND WHEREAS, the Railway Company desires to provide for the acquisition of the bonds of certain street surface railroad companies, the lines of which are leased to the Railway Company or form a part of or are used in connection with the system of railroads of the Railway Company;

Ownership of real estate.

AND WHEREAS, the Railway Company is also the owner of certain parcels of real estate in the County of New York, in the City of New York, State of New York, hereinafter particularly described, and is the lessee of other parcels of real estate in said city;

Underlying mortgages.

AND WHEREAS, certain of the railroads, properties, franchises, and real estate aforesaid, owned by the Railway Company, are subject to the liens of certain mortgages and deeds of trust severally and respectively securing bonds issued thereunder or secured thereby of the Railway Company, The Lexington Avenue and Pavonia Ferry Railroad Company, The Columbus and Ninth Avenue Railroad Company, The Broadway Surface Railroad Company, The Metropolitan Crosstown Railway Company, the South Ferry Railroad Company, Oren Root, Jr.; and John D. Crimmins (hereinafter called "outstanding old bonds"), which said mortgages and deeds of trust and the amount and description of the outstanding old bonds secured thereby are hereinafter in Article Second of this indenture particularly set forth; and certain of the railroads, properties, franchises and real estate aforesaid, leased to the Railway Company, and also certain of the railroads, properties, franchises and real estate aforesaid, forming part of or used in connection with the Railway Company's system, are subject to the liens of certain mortgages and deeds of trust severally and respectively securing bonds issued thereunder of The Broadway and Seventh Avenue Railroad Company, The Second Ave-

nue Railroad Company, in the City of New York, the Central Park, North and East River Railroad Company, the Bleecker Street and Fulton Ferry Railroad Company, the Twenty-third Street Railway Company, the Forty-second Street and Grand Street Ferry Railroad Company, the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, the Thirty-fourth Street Crosstown Railway Company, the Fulton Street Railroad Company, The Central Crosstown Railroad Company of New York and The Christopher and Tenth Street Railroad Company (hereinafter called "collateral bonds"), which said mortgage and deeds of trust and the amount and description of the collateral bonds secured thereby are also in said Article Second particularly set forth; and there are also outstanding certain Five Per Cent. Bonds of The Metropolitan Crosstown Railway Company, unsecured by mortgage (included in the term "outstanding old bonds") and certain Debenture Bonds of The Second Avenue Railroad Company, in the City of New York, and certain Five Per Cent. Debenture Bonds of the Twenty-third Street Railway Company, also unsecured by mortnage (included in the term "collateral bonds"), the amount and description of which are also in said Article Second particularly set forth; and payment of a large number of said outstanding old bonds and collateral bonds has been guaranteed by the Railway Company; and it is expedient to refund, or to provide for refunding said outstanding old bonds, and to provide funds necessary for completing, finishing and operating the railroads of the Railway Company and to provide for the acquisition of the said collateral bonds and for the other lawful purposes of the Railway Company;

Existing guarantees.

Purposes of this mortgage.

AND WHEREAS, the Railway Company is the owner of certain shares of the capital stock of The Broadway and Seventh Avenue Railroad Company, the Forty-second Street and Grand Street Ferry Railroad Company, the Central Park, North and East River Railroad

Ownership of stock of railroad companies

Company and the Thirty-fourth Street Crosstown Railway Company, hereinafter more particularly described (the railroads of said companies forming a part of the system of railroads of the Railway Company), and said shares of stock are pledged and deposited under the General and Collateral Trust Mortgage of the Railway Company to the Guaranty Trust Company of New York, as Trustee, dated February 1, 1897;

Lease to Interurban Company.

AND WHEREAS, the Railway Company heretofore on or about the 14th day of February, 1902, by its certain indenture of lease bearing date on that day did grant, lease and demise unto the Interurban Street Railway Company, a street surface railroad company organized and existing under the laws of the State of New York, all the railroads, railroad routes, properties, franchises and real estate owned by or leased to the Railway Company as aforesaid, for the term of nine hundred and ninety-nine (999) years next ensuing from and after the said 14th day of February, 1902, which said lease has been duly recorded in the office of the Register of Deeds of the County of New York, and to which and the record thereof reference is hereby made;

Agreement to pay interest upon funded debt by Interurban Company.

AND WHEREAS, the said Interurban Street Railway Company in and by the said indenture of lease did agree to pay all interest upon the funded debt of the Railway Company, including the interest upon the bonds issued and to be issued hereunder;

Resolution to issue bonds.

AND WHEREAS, the Railway Company, by due action of its board of directors and of its stockholders, has duly resolved, for the purpose of refunding, and providing for refunding, said outstanding old bonds, and to provide funds necessary for the purpose of completing, finishing and operating its railroads, and for acquiring said collateral bonds, and for its other lawful purposes, to issue its bonds to be known as its "Re-

funding One Hundred Year Gold Bonds," limited to the principal amount of $65,000,000 at any one time outstanding, such bonds to be dated as of April 1, 1902, in the case of coupon bonds, and of the time of their issue in the case of registered bonds, and to become and be payable on the first day of April, in the year 2002, at the City of New York, in gold coin of the United States of or equal to the present standard of weight and fineness, and to bear interest at such rate as the board of directors may from time to time determine as to any then unissued bonds, not exceeding four per cent. per annum, from the first day of April, 1902, payable in like gold coin semi-annually on the first day of April and the first day of October in each year;

Consent of Board of Railroad Commissioners and stockholders to mortgage.

AND WHEREAS, this mortgage and deed of trust to secure said bonds was duly consented to by the Board of Railroad Commissioners of the State of New York and by stockholders owning at least two-thirds of the entire capital stock of the Railway Company, such stock having been represented and voted upon in person or by proxy at a special meeting of the stockholders duly called for that purpose in pursuance of the statute in such case made and provided, and the consent of said Board and the consent of said stockholders (evidenced by a sworn certificate of the vote of said meeting), both in due form are to be contemporaneously herewith duly filed and recorded in accordance with law in the office of the Register of the County of New York, in which County the Railway Company has its principal place of business, and wherein its property is situated;

AND WHEREAS, said Refunding One Hundred Year Gold Bonds, coupons and trustee's certificate are substantially of the tenor and purport following, to wit (except that any of said bonds may bear interest at a less rate than four per cent. per annum):

[FORM OF COUPON BOND.]

Form of coupon bond. No. $1,000.

UNITED STATES OF AMERICA,

STATE OF NEW YORK.

METROPOLITAN STREET RAILWAY COMPANY.

REFUNDING ONE HUNDRED YEAR GOLD MORTGAGE BOND, DUE 2002.

The METROPOLITAN STREET RAILWAY COMPANY (hereinafter called the "Railway Company"), for value received, hereby promises to pay to the bearer, or, if registered, to the registered holder of this bond, One Thousand Dollars, gold coin of the United States of America, of or equal to the present standard of weight and fineness, on the first day of April, in the year 2002, at its office or agency in the City of New York, and to pay interest thereon from April 1, 1902, at the rate of four per cent. per annum, payable at said office or agency in like gold coin, semi-annually on the first days of April and October in each year, upon presentation and surrender, as they severally mature, of the interest coupons hereto annexed. Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Railway Company may be required to pay thereon or retain therefrom under any present or future law of the United States of America, or of any state, county, or municipality therein.

This bond is one of a series of coupon bonds and registered bonds of the Railway Company, known as its "Refunding One Hundred Year Gold Bonds," issued and to be issued to an amount not exceeding in

the aggregate the principal sum of sixty-five million dollars ($65,000,000) at any one time outstanding, and all issued and to be issued under and equally secured by a mortgage and deed of trust, dated March 21, 1902, and executed by the Railway Company to the Morton Trust Company, as Trustee, to which mortgage and deed of trust reference is made for a statement of the nature and extent of the security, the rights of holders of bonds under the same, and the terms and conditions upon which the bonds are issued and secured.

This bond shall pass by delivery unless registered in the name of the owner on the books of the Railway Company, such registry being noted on the bond by the Railway Company. After such registry, no tranfer shall be valid unless made on said books by the registered holder in person or by his attorney duly authorized, and similarly noted on the bond; but the same may be discharged from registry by being transferred to bearer, and thereafter transferability by delivery shall be restored; but this bond may again from time to time be registered or transferred to bearer as before. Such registration, however, shall not affect the negotiability of the coupons, which shall continue to be transferable by delivery. The holder of this bond may, at his option, surrender the same for cancellation, with all unmatured coupons thereto attached or appertaining, in exchange for a registered bond without coupons, as provided in said mortgage and deed of trust.

This bond shall not be valid or become obligatory for any purpose until it shall have been authenticated by the certificate of the said Trustee hereon endorsed.

In witness whereof, the Metropolitan Street Railway Company has caused these presents to be signed by its President or one of its Vice-Presidents, and its corporate seal to be hereunto affixed, and to be attested by its Secretary or an Assistant Secretary, and coupons for said interest with the engraved signature of its

Treasurer to be attached hereto, as of the first day of April, 1902.

METROPOLITAN STREET RAILWAY COMPANY,
by

Vice-President.

Attest:

Assistant Secretary.

Form of coupon.

[FORM OF INTEREST COUPON.]

No. $20.

On the first day of
the Metropolitan Street Railway Company will pay to bearer at its office or agency in the City of New York twenty dollars ($20) United States gold coin, without deduction for taxes, being six months' interest then due on its Refunding One Hundred Year Gold Bond No.

Treasurer.

Form of registered bond.

[FORM OF REGISTERED BOND.]

No. $

UNITED STATES OF AMERICA,

STATE OF NEW YORK.

METROPOLITAN STREET RAILWAY COMPANY.

REGISTERED REFUNDING ONE HUNDRED YEAR GOLD MORTGAGE BOND, DUE 2002.

THE METROPOLITAN STREET RAILWAY COMPANY (hereinafter called the "Railway Company"), for value received, hereby promises to pay to
or asigns, Thousand
Dollars, gold coin of the United States of America, of

or equal to the present standard of weight and fineness, on the first day of April, in the year 2002, at its office or agency in the City of New York, and to pay interest thereon from the first day of April or October, as the case may be, next preceding the date hereof, at the rate of four per cent. per annum, payable at said office or agency in like gold coin, semi-annually on the first days of April and October in each year. Both the principal and interest of this bond are payable without deduction for any tax or taxes which the Railway Company may be required to pay thereon or retain therefrom under any present or future law of the United States of America, or of any state, county or municipality therein.

This bond is one of a series of coupon bonds and registered bonds of the Railway Company, known as its "Refunding One Hundred Year Gold Bonds," issued and to be issued to an amount not exceeding in the aggregate the principal sum of sixty-five million dollars ($65,000,000) at any one time oustanding, and all issued and to be issued under and equally secured by a mortgage and deed of trust, dated March 21, 1902, and executed by the Railway Company to the Morton Trust Company, as Trustee, to which mortgage and deed of trust reference is made for a statement of the nature and extent of the security, the rights of holders of bonds under the same, and the terms and conditions upon which the bonds are issued and secured.

This bond is transferable by the registered holder thereof, in person or by attorney duly authorized, on the books of the Railway Company at its office or agency in the City of New York, upon surrender and cancellation of this bond, and a new registered bond will be issued to the transferee in exchange therefor, as provided in said mortgage and deed of trust, and on payment, if the Railway Company shall so require, of the transfer fee therein provided for.

This bond shall not be valid or become obligatory for any purpose until it shall have been authenticated by the certificate of the said Trustee hereon indorsed.

IN WITNESS WHEREOF, the Metropolitan Street Railway Company has caused these presents to be signed by its President or one of its Vice-Presidents, and its corporate seal to be hereunto affixed, and to be attested by its Secretary or an Assistant Secretary, this day of

METROPOLITAN STREET RAILWAY COMPANY
by

Vice-President.

Attest :

Assistant Secretary.

Form of Trustee's certificate.

[FORM OF TRUSTEE'S CERTIFICATE TO COUPON AND REGISTERED BONDS.]

THIS IS TO CERTIFY that this bond is one of the bonds described in the within mentioned mortgage indenture or deed of trust, dated March 21, 1902.

MORTON TRUST COMPANY,
Trustee,
by

Vice-President.

Authorization of mortgage by board of directors.

AND WHEREAS, the Board of Directors of the Railway Company has approved the form of this indenture and directed that the same be executed and delivered to the Morton Trust Company, as Trustee ;

NOW, THEREFORE, THIS INDENTURE WITNESSETH : That in order to secure the payment of the principal and interest of all such bonds at any time issued and outstanding under this indenture, according to their tenor, purport and effect, and to secure the performance and observance of all the covenants and conditions herein contained, and to declare the terms and conditions upon which said bonds are issued, received and held,

and for and in consideration of the premises, and of the purchase or acceptance of such bonds by the holders thereof, and of the sum of one dollar, lawful money of the United States of America, to it duly paid by the Trustee at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, the METROPOLITAN STREET RAILWAY COMPANY, party of the first part, has granted, bargained, sold, released, conveyed, assigned, transferred and set over, and by these presents does grant, bargain, sell, release, convey, assign, transfer and set over unto the MORTON TRUST COMPANY, party of the second part, its successors and assigns forever: ALL AND SINGULAR THE RAILROADS, RAILROAD ROUTES, ESTATES, LEASEHOLDS, PROPERTIES, RIGHTS, PRIVILEGES AND FRANCHISES DESCRIBED AS FOLLOWS, TO WIT:

Granting clause.

Properties mortgaged.

I.

STREET SURFACE RAILROADS IN THE COUNTY OF NEW YORK, CITY OF NEW YORK, AND STATE OF NEW YORK, OWNED BY THE RAILWAY COMPANY, DESCRIBED AS FOLLOWS:

Houston, West Street and Pavonia Ferry, or Avenue C Line.

Commencing at the intersection of Duane Street with West Street, thence through and along Duane Street with a double track to Greenwich Street, thence through and along Greenwich Street with a single track to Charlton Street, thence through and along Charlton Street with a single track to Prince Street, thence through and along Prince Street with a single track to Bowery, thence upon and across the Bowery with a single track to Stanton Street, thence through and along Stanton Street with a single track to Pitt Street, thence through and along Pitt Street with a single track to Avenue C, thence through and along Avenue C, wtth a single track to Third Street, thence through and along Avenue

C, from Third Street with a double track to the northern extremity of the said Avenue C, thence through and along Third Street, connecting with the double track in Avenue C, with a single track to First Avenue, thence through and along First Avenue with a single track to East Houston Street, thence through and along East Houston Street with a single track to the Bowery, thence upon and across the Bowery with a single track to West Houston Street, thence through and along West Houston Street, with a single track to Washington Street, thence through and along Washington Street with a single track to Duane Street; thence through and along Duane Street, connecting with the double track to the place of beginning, being the route described in Chapter 625 of the Laws of 1868 of the State of New York.

Extension on Avenue C through Seventeenth Street, etc.

From Avenue C through Seventeenth and Eighteenth Streets, by single track in each street, to Avenue A, thence through and along Avenue A, by double track to Twenty-third Street; thence through and along Twenty-third Street, by double track to First Avenue; thence through and along First Avenue, by double track, to Thirty-sixth Street; thence through and along Thirty-sixth Street, by single track, to Lexington Avenue; and also through and along Thirty-fifth Street, by single track, from First Avenue to Lexington Avenue; thence through and along Lexington Avenue, by single or double track, to Forty-second Street; thence through and along Forty-second Street by double track to Fourth Avenue. Also, by single track, through and along Charlton Street, from Greenwich Street to West Street; and, by single track, through and along West Houston Street, from Washington Street to West Street; thence through and along West Street by double track, to Chambers Street. Also, through and along Tenth Street, connecting with the double track in Avenue C, by single

track to Avenue D; thence through and along Tenth Street, by double track to the East River. Also connecting with the double track on Tenth Street, through and along Avenue D, by single track, to Eleventh Street; thence through and along Eleventh Street, by single track, to and connecting with the double track on Avenue C, being the route described in Chapter 19 of the Laws of 1871 of the State of New York.

Chambers Street and Grand Street Ferry Line.

Commencing at the foot of Roosevelt Street, East River, thence through, upon and along South Street, with double tracks to James Slip; thence through, upon and along James Slip, with double tracks, to New Chambers Street; thence through, upon and along New Chambers Street to Chatham Street, with double tracks; thence across Chatham Street to Chambers Street, with single track; thence through, upon and along Chambers Street, with single track, to Pavonia Avenue Ferry, foot of Chambers Street, North River; thence returning, with single or double tracks, through, upon and along West Street to Duane Street; thence through, upon and along Duane Street, with single track to and across Chatham Street to connect with the double tracks at New Chambers Street. Also from New Chambers Street, at Madison Street, through, upon and along Madison Street, with double tracks to Grand Street; thence through, upon and along Grand Street, with single or double tracks to the ferry at the foot of Grand Street. Also, from Madison Street, at Jackson Street, through, upon and along Jackson Street, with double or single tracks to Cherry Street; thence through, upon and along Cherry Street, with double or single tracks to the East River; thence through, upon and along East Street, with double or single tracks, to connect with the tracks at the foot of Grand Street, East River, being the route described in the resolution of the Common Council of the City of New York, adopted on December 30, 1884.

Broadway Surface Line.

Commencing at the southerly end of Broadway near the Battery and running thence with double tracks through and along Broadway, and across Fourteenth Street to and along Union Square to a point at or near the intersection of Fifteenth Street and West Union Square, being the route described in the resolution of the Common Council of the City of New York, adopted December 5, 1884.

South Ferry Line.

Commencing at the northerly side of Vesey Street; thence through, upon and along Church Street, with double track to Morris Street; thence through, upon and along Morris Street, with a double track to Greenwich Street; thence through, upon and along Greenwich Street, with a double track to Battery Place; thence through, upon and along Battery Place, with a double track to State Street; thence through, upon and along State Street with a single track, to Whitehall Street; thence through, upon and along Whitehall Street, with a single track to the South Ferry; returning through, upon and along Whitehall Street to Bowling Green; thence through, upon and along the southerly side of Bowling Green to connect with double tracks at Battery Place, being the route described in Chapter 508 of the Laws of 1874 of the State of New York.

Metropolitan Cross-Town Line.

Commencing upon East Street, at or near the Grand Street Ferry, and running thence through, upon and along East Street, with a double track to Delancey Slip or Street; thence through, upon and along Delancey Street, with a double track, to the Bowery; thence through, upon and across the Bowery to Spring Street; thence through, upon and along Spring Street,

with a double track, to South Fifth Avenue; thence through, upon and along South Fifth Avenue, with a double track, to Fourth Street; thence through, upon and along Fourth Street, with a double track, to Macdougal Street; thence through, upon and along Macdougal Street, with a double track, to Waverly Place; thence through, upon and along Waverly Place, to Christopher Street, with a double track; thence through and along Waverly Place, from Christopher Street to Bank Street with a single track; thence through, upon and along Bank Street, with a double track, to Greenwich Avenue; thence through, upon and along Greenwich Avenue, with a double track, to Thirteenth Street and Horatio Street; thence through, upon and along Thirteenth Street and Horatio Street, with a single track, to Eighth Avenue; thence through, upon and across Eighth Avenue to Thirteenth Street; thence through, upon and along Thirteenth Street, with a double track to Thirteenth Avenue; thence through, upon and along Thirteenth Avenue, with a double track, to Fourteenth Street, being the route described in the resolution of the Common Council of the City of New York, adopted December 24, 1889.

Lexington Avenue and Pavonia Ferry Line.

Commencing at Forty-second Street, in the City of New York, at a point of connection with the tracks of the Houston, West Street and Pavonia Ferry Railroad Company, at the junction of said street with Lexington Avenue; thence on and over said Lexington Avenue, with double tracks, to Harlem River, with further constructions and extensions from the junction of One hundred and sixteenth Street and Lexington Avenue, through One hundred and sixteenth Street to Morningside Park and to the East River, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Columbus Avenue and Ninth Avenue Line.

Commencing in Columbus Avenue, in the City of New York, at or near Sixty fourth Street, there to connect with the existing double track of the Ninth Avenue Railroad Company in said avenue; thence running across the surface of the Boulevard and upon, along and over the surface of Columbus Avenue (formerly Ninth Avenue), with double tracks to One hundred and tenth street; also from Columbus Avenue, with double tracks through and along One hundred and sixth street to Amsterdam Avenue, to connect with the existing double track in Amsterdam Avenue (formerly Tenth Avenue), now owned by the Ninth Avenue Railroad Company, being the route described in the resolution of the Common Council of the City of New York, adopted October 10, 1892.

Fort Lee Ferry Extension.

Commencing at the intersection of One hundred and twenty-fifth Street and Amsterdam Avenue (formerly Tenth Avenue), running thence westerly, through One hundred and twenty-fifth Street to the Boulevard, thence northerly through the Boulevard to One hundred and thirtieth Street and thence westerly, through One hundred and thirtieth Street westerly to Twelfth Avenue, to a point on the west side of said avenue at or near Manhattan Street and at or near Fort Lee Ferry, being the route described in the resolution of the Common Council of the City of New York, adopted December 19, 1893.

Columbus and Ninth Avenue Railroad Connection and Extension on One hundred and ninth Street.

Commencing at the intersection of Columbus Avenue and One hundred and ninth Street, and connecting there by suitable curves, switches and appliances with

the road of the Columbus and Ninth Avenue Railroad Company, running thence easterly with double tracks, through, upon and along One hundred and ninth Street to Manhattan Avenue; thence northerly, upon Manhattan Avenue, with double tracks, to the southerly side of Cathedral Parkway (formerly One hundred and tenth Street), there to unite with an extension or branch of the Metropolitan Street Railway Company, being the route described in the resolution of the Common Council of the City of New York, adopted September 18, 1894.

Metropolitan Street Railway Connection and Extension on Manhattan Street.

Commencing at the intersection of Manhattan Avenue and One hundred and sixteenth Street, and connecting there by suitable curves, switches and appliances with the road of the Railway Company, running thence southerly, with double tracks, through, upon and along Manhattan Avenue to the southerly side of Cathedral Parkway (formerly One hundred and tenth Street), there to unite with an extension or branch of the Columbus and Ninth Avenue Railroad Company, being the route described in the resolution of the Common Council of the City of New York, adopted September 18, 1894.

Houston, West Street and Pavonia Ferry Connection and Extension on Ridge Street and Montgomery Street.

Commencing at the intersection of Houston Street and Avenue C in the City of New York, connecting there by suitable curves and appliances with the route of the Houston, West Street and Pavonia Ferry Railroad Company, running thence through, upon and along Houston Street over the single track in said street of the road of the Forty-second Street and Grand Street Ferry Railroad Company to Ridge Street; thence (with suitable curves and appliances

at or near Ridge Street) through, upon and along Ridge Street with a single track to the said point of union, and by the construction, maintenance and operation of an extension or branch of the said railroad formerly of the Chambers Street and Grand Street Ferry Railroad Company, commencing at the intersection of Montgomery Street and Madison Street, connecting there by suitable curves and appliances with the said road formerly of the Chambers Street and Grand Street Ferry Railroad Company, running thence with a single track through, upon and along Montgomery Street to Division Street; thence through upon and across Division street to Ridge Street; thence through, upon and along Ridge Street with a single track to the said point of union, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Houston, West Street and Pavonia Ferry Railroad Connection and Extension on Pitt Street and Gouverneur Street.

Commencing at the intersection of Third Street and Avenue C, connecting there by suitable curves and appliances with the tracks of the Houston, West Street and Pavonia Ferry Railroad Company, and running thence with an additional single track through, upon and along Avenue C to and across Houston Street to Pitt Street, there to connect by suitable curves and appliances with the existing single track of the Houston, West Street and Pavonia Ferry Railroad Company in Pitt Street, and running thence through, upon and along Pitt Street over the said single track in said street to Stanton Street; thence (with suitable connections and curves at Stanton Street) upon and across Stanton Street with a single track; thence through, upon and along Pitt Street to said point of union; and by the construction, maintenance and operation of an extension or branch of the railroad formerly of the Chambers Street and Grand

Street Ferry Railroad Company, commencing at the intersection of Gouverneur Street and Madison Street, connecting there by suitable curves and appliances with the said road formerly of the Chambers Street and Grand Street Ferry Railroad Company, running thence, with a single track, through, upon and along Gouverneur Street to and across Grand Street: thence with a single track through, upon and along Pitt Street to said point of union, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Metropolitan Cross-Town Connection and Extension on West Third Street.

Commencing at the intersection of South Fifth Avenue and West Third Street, connecting there by suitable curves and attachments with the road of The Metropolitan Cross-Town Railway Company, and running thence westerly with double tracks through, upon and along West Third Street to a point of union with an extension or branch of the railroad of the Sixth Avenue Railroad Company, at or near Sullivan Street, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Metropolitan Cross-Town Connection and Extension on Broome, Sullivan and Watts Streets.

From a connection with the route of The Metropolitan Cross-Town Company on South Fifth Avenue, at the intersection of Broome Street, by suitable curves and appliances; thence with double tracks through, upon and along Broome Street to Sullivan Street; thence through, upon and along Sullivan Street with double tracks to Watts Street; thence through, upon and along Watts Street with double tracks to a union with the route and road of the Houston, West Street and Pavonia Ferry Railroad Company, now on

West Street, and to connect also with Desbrosses Street Ferry, said branch over said streets to said union of the routes or road of The Metropolitan Cross-Town Railway Company when built on South Fifth Avenue to Broome Street, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Metropolitan Cross-Town Connection and Extension on South Fifth Avenue.

Commencing at South Fifth Avenue and Spring Street, connecting there by suitable curves and appliances with the existing road of The Metropolitan Cross-Town Railway Company, and running thence southerly with double tracks through, upon and along South Fifth Avenue to Broome Street, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Houston, West Street and Pavonia Ferry Connection and Extension on Lexington Avenue.

Along and over Lexington Avenue from Twenty-seventh Street to Thirty-fifth Street by double track, and by single track from Thirty-fifth Street to Thirty-sixth Street, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Metropolitan Street Railway Connection and Extension on West Broadway.

Commencing at the intersection of West Broadway and Duane Street, and connecting there by suitable curves, switches and appliances with the Metropolitan Street Railway Company's existing tracks in said Duane Street, running thence southerly in or upon West Broadway, with double tracks to Chambers

Street, and thence southerly with double tracks, in or upon West Broadway (a portion of which was formerly College Place), to Vesey Street, there to connect with a double track extension or branch of the railroad and route of the Central Park, North and East River Railroad Company, being the route described in the resolution of the Common Council of the City of New York, adopted April 14, 1896.

II.

REAL ESTATE OWNED BY THE RAILWAY COMPANY, BEING THE FOLLOWING DESCRIBED PIECES AND PARCELS OF LAND WITH THE BUILDINGS AND IMPROVEMENTS THEREON SITUATE, LYING AND BEING IN THE COUNTY OF NEW YORK, CITY OF NEW YORK AND STATE OF NEW YORK.

A. REAL ESTATE NOT SUBJECT TO THE RAILWAY COMPANY'S GENERAL AND COLLATERAL TRUST MORTGAGE.

Lexington Avenue and Thirty-third Street Property.

All that certain plot, piece or parcel of land with the buildings thereon erected, situate, lying and being in the City and County of New York, bounded and described as follows: Beginning at a point formed by the intersection of the easterly line of Park (formerly Fourth) Avenue, with the northerly line or side of Thirty-second Street; running thence northerly along the easterly side of Park Avenue, one hundred ninety-seven (197) feet six (6) inches to the southeasterly corner of Park Avenue and Thirty-third Street; thence easterly along the southerly side of Thirty-third Street, four hundred and twenty-five (425) feet to the southwesterly corner of Thirty-third Street and Lexington Avenue; thence southerly along the westerly side of Lexington Avenue, one hundred forty-

eight (148) feet one (1) inch; thence westerly parallel or nearly so with Thirty-third Street, forty eight (48) feet four (4) inches; thence southerly and nearly parallel with Lexington Avenue, forty-nine (49) feet five (5) inches to the northerly side of Thirty-second Street, at a point distant forty-eight (48) feet four (4) inches westerly from the westerly side of Lexington Avenue; thence westerly along the northerly side of Thirty-second Street, three hundred seventy-six (376) feet eight (8) inches to the point or place of beginning; being the same premises heretofore conveyed to The New York and Harlem Railroad Company by the following instruments, to wit: Deed from Mary Murray, dated January 8, 1849, and recorded in the Office of the Register of the County of New York in Liber 518 of Conveyances, page 420; deed from Nathan Jackson and wife, dated February 22, 1849, and recorded in said Register's Office in Liber 558 of Conveyances, page 215; deed from John Alstyne, dated December 13, 1851, and recorded in said Register's Office in Liber 590 of Conveyances, page 226; deed from Henry Abell and wife, dated September 1, 1865, and recorded in said Register's Office, in Liber 947 of Conveyances, page 251; deed from Jesse A. Marshall and wife, John F. Marshall and William H. Wilkins and wife, dated June 1, 1875, and recorded in said Register's Office in Liber 1333 of Conveyances, page 51; deed from Peter S. Bogart and wife, dated December 10, 1849, and recorded in said Register's Office in Liber 537 of Conveyances, page 447, and which premises were conveyed by The New York and Harlem Railroad Company to Oren Root, Junior, by deed bearing date September 6, 1899, and recorded in the office of the Register of the County of New York on September 11, 1899, in Block Series (Conveyances), Section 3, Liber 65, page 136, and indexed under Block Number 888, and Section 5, Liber 63, page 307, and indexed under Block Number 1497, and were conveyed by Oren Root, Jr., to the Railway Company by indenture dated September 22, 1899, subject to a mort-

gage made by the said Root to the Mutual Life Insurance Company, dated September 20, 1899, to secure the payment of the sum of $950,000 and interest.

85th and 86th Streets and Madison Avenue Property.

Also, all those certain lots, pieces or parcels of land, with the buildings and improvements thereon, situate, lying and being in the City and County of New York, bounded and described as follows: Beginning at a point formed by the intersection of the northerly side of Eighty-fifth Street and the westerly side of Madison Avenue, and running thence westerly along the northerly side of said Eighty-fifth Street, two hundred twenty (220) feet; thence northerly parallel with Madison Avenue two hundred four (204) feet four (4) inches, to the southerly side of Eighty-sixth Street; thence easterly along the southerly side of Eighty-sixth street, two hundred twenty (220) feet to the southwesterly corner of Eighty-sixth Street and Madison Avenue; and thence southerly along the westerly side of Madison Avenue two hundred four (204) feet four (4) inches to the point or place of beginning; being the same premises heretofore conveyed to The New York and Harlem Railroad Company by the following instruments, to wit: Deed from Webster Wagner and wife, dated November 5, 1881, and recorded in the office of the Register of the County of New York, in Liber 1923 of Conveyances, page 203; deed from George B. Heath, dated December 3, 1886, and recorded in said Register's Office, in Liber 1998 of Conveyances, page 468; deed from Clark R. Gavit, dated December 22, 1885, and recorded in said Register's Office in Liber 2273 of Conveyances, page 333; deed from Webster Wagner and wife, dated November 12, 1881, and recorded in said Register's office, in Liber 1912 of Conveyances, page 342; deed from Warren S. Crane, dated November 21, 1889, and recorded in said Register's Office, in Liber 2273 of Conveyances, page 331, and deed from James M. Gotendorf and

others, dated August 12, 1885, and recorded in said Register's Office, in Liber 1912 of Conveyances, page 347 ; and which premises were conveyed by The New York and Harlem Railroad Company to Oren Root, Junior, by deed bearing date September 6, 1899, and Recorded in the office of the Register of the County of New York on September 11, 1899, in Block Series (Conveyances), Section 6, Liber 65, page 136, and indexed under Block Number 888, and Section 5, Liber 63, page 307, and indexed under Block Number 1497, and were conveyed by Oren Root, Jr., to the Railway Company by indenture dated September 22, 1899, subject to a mortgage made by the said Root to the Mutual Life Insurance Company dated September 20, 1899, to secure the payment of the sum of $950,000 and interest.

146th Street, 147th Street, Lenox Avenue and 7th Avenue Property.

All that certain lot, piece or parcel of land situate, lying and being in the Twelfth Ward in the City of New York, bounded and described as follows: Beginning at a point on the westerly side of Lenox Avenue (formerly Sixth Avenue) at a point distant one hundred (100) feet north of the corner formed by the intersection of the northerly side of One hundred and forty-sixth Street with the westerly side of Lenox Avenue, running thence northerly along the westerly side of Lenox Avenue to the corner formed by the intersection of the westerly side of Lenox Avenue and the southerly side of One hundred and forty-seventh Street, running thence westerly along the southerly side of One hundred and forty-seventh Street, to the corner formed by the intersection of the southerly side of One hundred and forty-seventh Street with the easterly side of Seventh Avenue, running thence southerly along the easterly side of said Seventh Avenue to the corner formed by the intersection of the easterly side of Seventh Avenue with the northerly side of One hundred and

forty-sixth Street, running thence easterly along the northerly side of One hundred and forty-sixth Street to a point distant four hundred forty (440) feet westerly from the corner formed by the intersection of the northerly side of One hundred and forty-sixth Street with the westerly side of Lenox Avenue (formerly Sixth Avenue), thence running northerly and parallel with the westerly side of Lenox Avenue aforesaid one hundred (100) feet, thence running eastwardly and parallel with the northerly side of One hundred and forty-sixth Street four hundred forty (440) feet to the point or place of beginning ; conveyed by indenture dated September 30, 1897, from The Metropolitan Traction Company of New York to the Railway Company and which indenture was recorded in the Office of the Register of the City and County of New York, on October 4, 1897, in Block Series (Conveyances), Section 7, Liber 48, page 99, and indexed under Block Number 2015 on the Land Map of the City of New York, and being part of the land which was conveyed to the Metropolitan Traction Company of New York by Charles D. Lane and Rosa G., his wife, by deed dated July 1, 1894, and recorded in the office of the Register of the City and County of New York on July 17, 1894, in Block Series (Conveyances) Section 7, Liber 22, page 384, and indexed under Block Number 2015 on the lamp map of the City of New York, and being subject to a mortgage of $150,000, with 5 per cent. per annum given by John D. Crimmins to the Mutual Life Insurance Company, dated February 20, 1893, and recorded in the Office of the Register of the City and County of New York on February 20, 1893, in Block Series (Mortgages), Section 7, Liber 23, page 301, and being also subject to the restrictions and covenants contained in a certain grant of the Mayor, Aldermen and Commonalty of the City of New York to Mary G. Pinckney, dated November 7, 1867, and recorded in the Register's Office of the City and County of New York, on November 15, 1867, in Liber 1041 of Conveyances,

page 1, in so far as the same affects the said described premises.

Also, that certain lot, piece or parcel of ground, with the buildings thereon erected, situate, lying and being in the Twelfth Ward of the City of New York, and bounded and described as follows: Commencing at the intersection of the northerly side of One hundred and forty-sixth Street with the westerly side of Lenox Avenue (formerly Sixth Avenue), running thence northerly along the westerly side of Lenox Avenue one hundred (100) feet or thereabouts; running thence westerly and parallel with the northerly side of One hundred and forty-sixth Street four hundred forty (440) feet or thereabouts; running thence southerly and parallel with the westerly side of Lenox Avenue one hundred (100) feet to the northerly side of One hundred and forty-sixth Street; and thence east easterly along the northerly side of One hundred and forty-sixth Street four hundred forty (440) feet or thereabouts to the point or place of beginning; being a portion of the premises heretofore conveyed to the Metropolitan Traction Company of New York by Charles D. Lane and Rosa G., his wife, by deed dated July 1, 1894, and recorded in the Office of the Register of the City and County of New York in Block Series (Conveyances), Section 7, Liber 22, page 384, and indexed under Block Number 2015, and which premises were conveyed to the Railway Company by The Metropolitan Traction Company of New York by deed dated July 2, 1897, and recorded in said Register's Office on July 20, 1897, in Block Series (Conveyances), Section 7, Liber 47, page 241, and indexed under Block Number 2015; subject, however, to a mortgage made by Charles D. Lane and Rosa G., his wife, to John D. Crimmins, and recorded in Block Series (Mortgages), Section 7, Liber 38, page 298, and also subject to the restrictions and covenants contained in a certain grant from the Mayor, Aldermen and Commonalty of the City of New York to Mary G. Pinckney, dated November 7, 1867, and recorded on November 15, 1867, in the Office of the

Register of the City and County of New York in Liber 1041 of Conveyances, page 1, in so far as the same affects the said described premises; provided, however, that the property described under the heading "146th, 147th Street Lenox Avenue and 7th Avenue property" is subject to the right, title and interest therein of the Sixth Avenue Railroad Company.

Dry Dock Street Property.

All that certain lot, piece or parcel of land, with the building thereon erected, situate, lying and being in the Eleventh Ward in the City of New York, bounded and described as follows: Beginning at a point on the westerly side of Dry Dock Street at the middle of the party wall distant southerly from the point or angle formed by the intersection of the westerly line of Dry Dock Street and the southerly line of Eleventh Street, ninety-four (94) feet nine and one-half (9½) inches or thereabouts running thence westerly parallel or nearly so with Eleventh Street and part of the way through a party wall eighty-four (84) feet, thence northerly and parallel or nearly so with Dry Dock Street twenty-two (22) feet, thence easterly parallel or nearly so with Eleventh Street eighty-four (84) feet to the westerly line of Dry Dock Street, thence southerly along the westerly line of Dry Dock Street twenty-two (22) feet to the point or place of beginning; be the said dimensions more or less. Being the same premises conveyed to The Metropolitan Traction Company of New York by Joseph Branagan, by deed dated November 23, 1892, and recorded in the office of the Register of the City and County of New York, on November 23, 1892, in Block Series (Conveyances) Section 2, Liber 14, page 444, and indexed under Block Number 380, and which were conveyed by The Metropolitan Traction Company of New York to the Railway Company by indenture dated September 15, 1897, and recorded in the office of the Register of the City and County of

New York on September 28, 1897, in Block Series (Conveyances) Section 2, Liber 56, page 229, and indexed under Block Number 380.

Front Street Property.

All those three certain lots, pieces or parcels of land, with the buildings and improvements erected thereon, situate, lying and being in the City of New York, and known as Numbers 13, 15 and 17 Front Street, which, taken together, according to a survey thereof made August, 1883, are bounded and described as follows: Beginning at the northeasterly corner thereof at a point in the southerly line or side of Front Street opposite the middle of a party wall and distant thirty-two (32) feet seven (7) inches westerly from the southwesterly corner of Front and Broad Streets, and running thence southwardly parallel or nearly so with Broad Street and along the middle of said party wall, one hundred five (105) feet one (1) inch to a point opposite a fence; thence westwardly along said fence and parallel or nearly so with Front Street eighteen (18) feet nine (9) inches to an angle in said fence; thence in a northwesterly direction and along said fence to another angle therein five (5) feet; thence again westwardly parallel or nearly so with Front Street and along said fence, the brick wall of a five-story building and another fence thirty-seven (37) feet four and one-half (4½) inches to the wall of a five-story brick building; thence northwardly and along said wall to an angle therein twenty (20) feet; thence again westwardly along said wall three (3) feet six (6) inches to the middle of a party wall; thence northwardly along the middle of said party wall and parallel or nearly so with Moore Street seventy-nine (79) feet ten (10) inches to the southerly side of Front Street, and thence eastwardly along said southerly side of Front Street, sixty-five (65) feet one-half (½) inch to the point or place of beginning; that portion which is known as Number 13 Front Street being subject to an agreement

made by Mulford Martin with Elias H. Herrick, dated May 28, 1840. Being the same property which was conveyed to The Metropolitan Traction Company of New York by John D. Crimmins by deed dated September 29, 1892, and recorded in the Office of the Register of the City and County of New York on November 29, 1892, in Block Series (Conveyances) Section 1, Liber 10, page 472, and indexed under Block Number 4, and which was conveyed to the Railway Company by deed dated September 11, 1896, and recorded in the said Register's Office on September 28, 1897, in Block Series (Conveyances) Section 1, Liber 43, page 361, and indexed under Block Number 4.

Ninth Avenue Property.

All those forty certain lots and parts of lots or gores of land, situate, lying and being in the City of of New York, in the Twenty-second Ward of said city, which, taken together as one parcel, are bounded and described as follows, *viz.* : Beginning at a point on the easterly side or line of Ninth Avenue which is distant sixty-five (65) feet northerly from the northerly line of Fifty-third Street ; running thence northerly along said easterly line of Ninth Avenue one hundred thirty-five (135) feet ten (10) inches, to the southerly line of Fifty-fourth Street ; thence easterly along said southerly line of Fifty-fourth Street, five hundred twenty-five (525) feet and to a point distant two hundred seventy-five (275) feet westerly from the point of intersection of the southerly line of Fifty-fourth Street with the westerly line of Eighth Avenue ; thence southerly on a line at right angles with the said southerly line of Fifty-fourth Street one hundred sixty-five (165) feet eleven and three-eighths (11⅜) inches ; thence in a northwesterly direction eighty-one (81) feet two (2) inches, to a point distant thirty-eight (38) feet two (2) inches north of Fifty-third Street ; thence westerly eighty-two (82) feet to a point forty-nine (49) feet north of Fifty-third Street ; thence westerly one hun-

dred twenty-nine (129) feet one (1) inch to a point distant fifty-two (52) feet north of Fifty-third Street; thence westerly one hundred forty-one (141) feet to a point distant fifty-one (51) feet eight (8) inches north of Fifty-third Street; thence westerly sixty-one (61) feet five (5) inches, to a point distant fifty-six (56) feet five (5) inches north of Fifty-third Street; thence westerly thirty-one (31) feet four (4) inches to the easterly line of Ninth Avenue at the point or place of beginning; together with all the buildings and erections now existing thereon; being part of the premises conveyed to John D. Crimmins by the Eighth Avenue Railroad Company, a corporation created and existing under the laws of the State of New York, by deed dated July 19, 1892, and recorded in the Office of the Register of the City and County of New York on August 3, 1892, in Block Series (Conveyances), Section 4, Liber 17, page 78; and by said John D. Crimmins conveyed to The Metropolitan Traction Company of New York by deed dated September 29, 1892, and recorded in said Register's Office on September 29, 1892, in Block Series (Conveyances), Section 4, Liber 18, page 138, and indexed under Block Numbers 1044 and 1045; and by said Metropolitan Traction Company to the Railway Company by deed dated September 11, 1896, and recorded in the office of the Register of the City and County of New York, on September 28, 1897, in Block Series (Conveyances), Section 4, Liber 62, page 11, and indexed under Block Numbers 1044 and 1045 on the Land Map of the City of New York; subject to a certain mortgage dated July 19, 1892, made by John D. Crimmins to The Eighth Avenue Railroad Company, to secure the payment of the sum of Two hundred and fifty thousand dollars ($250,000) and interest, on which $50,000 has been paid.

Fifty-third Street Property.

All that certain gore, lot, piece or parcel of land with the building thereon situate, lying and being on

the northerly side of Fifty-third Street in the City of New York, in the Twenty-second Ward of said city, and bounded and described as follows : Beginning at a point on the northerly side of Fifty-third Street at a point distant four hundred thirty-four (434) feet eleven (11) inches easterly from the corner formed by the intersection of the easterly side of Ninth Avenue with the northerly side of Fifty-third Street ; running thence northerly and parallel with Ninth Avenue thirty-nine (39) feet three and one-half (3½) inches or thereabouts to the southerly line of lands formerly of Jacob Harsen ; thence easterly along the said line of lands formerly of Jacob Harsen twenty-five (25) feet or thereabouts, thence southerly and again parallel with Ninth Avenue thirty-seven (37) feet five and one-eighth (5⅛) inches or thereabouts to the northerly side of Fifty-third Street, and thence westerly along said northerly side of Fifty-third Street twenty-five (25) feet to the point or place of beginning. Being the same premises conveyed to John D. Crimmins by Margaret F. Miller by deed dated August 3, 1892, and recorded in the Office of the Register of the City and County of New York on August 3, 1892, in Block Series (Conveyances) Section 4, Liber 17, page 87, and by the said John D. Crimmins conveyed to The Metropolitan Traction Company of New York by deed dated September 29, 1892, and recorded in the Office of the Register of the City and County of New York on September 29, 1892, in Block Series (Conveyances) Section 4, Liber 18, page 135 and indexed under Block Number 1044, and by said The Metropolitan Traction Company of New York, conveyed to the Railway Company by deed dated September 15, 1897, and recorded in said Register's office on September 28, 1897, in Block Series (Conveyances) Section 4, Liber 62, page 9, and indexed under block number 1044.

Also all those certain gore lots, pieces or parcels of land, with the improvements thereon, situate, lying and being in the Twenty-second Ward of the City of New York and bounded and described as follows : Begin-

ning at a point on the northerly side of Fifty-third Street distant two hundred and seventy-five (275) feet westerly from the corner formed by the intersection of the westerly side of Eighth Avenue with the northerly side of Fifty-third Street and running thence westerly along said northerly side of Fifty-third Street sixty-five (65) feet one (1) inch to the easterly line of a gore lot conveyed to the Railway Company by The Metropolitan Traction Company of New York by deed dated September 15, 1897; thence northerly along said easterly line of said gore lot thirty-seven (37) feet five and one-eighth (5⅛) inches or thereabouts to the southerly line of lands formerly of Jacob Harsen, deceased; thence easterly along said line of land of Jacob Harsen, deceased, sixty-five (65) feet one (1) inch or thereabouts to a point distant two hundred seventy-five (275) feet westerly from Eighth Avenue; and thence southerly on a line parallel with Eighth avenue thirty-four (34) feet ten and five-eighths (10⅝) inches to the northerly side of Fifty-third Street to the point or place of beginning. Also, all those certain gore lots, pieces or parcels of land, with improvements thereon, situate, lying and being in the Twenty-second Ward of the City of New York and bounded and described as follows: Beginning at a point on the northerly side of Fifty-third Street distant four hundred nine (409) feet eleven (11) inches from the corner formed by the intersection of the easterly side of Ninth Avenue with the northerly side of Fifty-third Street; running thence northerly forty-two (42) feet two (2) inches or thereabouts to the southerly line of lands formerly of Jacob Harsen, deceased; thence easterly along said line of lands of Jacob Harsen, deceased, twenty-five (25) feet to the westerly line of a gore lot conveyed to the Railway Company by The Metropolitan Traction Company of New York by deed dated September 15, 1897; thence southerly along said westerly line of said gore lot and parallel with Ninth Avenue thirty-nine (39) feet three and one-half (3½) inches or thereabouts to the northerly side of Fifty-third Street at a point distant

three hundred sixty-five (365) feet one (1) inch westerly from the corner formed by the intersection of the westerly side of Eighth Avenue with the northerly side of Fifty-third Street, and thence westerly along said northerly side of Fifty-third Street twenty-five (25) feet to the point or place of beginning; being the premises conveyed to the Railway Company by The Metropolitan Traction Company of New York by deed dated September 15, 1897, and recorded in the office of the Register of the City and County of New York on September 28, 1897, in Block Series (Convayonces) Section 4, Liber 62, page 6, and indexed under Block Number 1044.

Twenty-third Street Leasehold.

All those certain lots, pieces and parcels of land in the Sixteenth Ward of the City of New York which, taken together, are bounded and described as follows: Beginning at the intersection of the northerly side of West Twenty-third Street with the westerly side of Eleventh Avenue; thence running northerly and parallel with Eleventh Avenue ninety-eight (98) feet nine (9) inches or thereabouts to the half distance line between Twenty-third Street and Twenty-fourth Street; thence westerly and along said half distance line four hundred fifty-two (452) feet seven and one-half (7½) inches or thereabouts to the easterly line of Thirteenth Avenue; thence southeasterly and parallel with Thirteenth Avenue one hundred one (101) feet four (4) inches or thereabouts to a point formed by the intersection of the easterly line of Thirteenth Avenue with the northerly line of Twenty-third Street; thence easterly and parallel with Twenty-third Street four hundred thirty (430) feet or thereabouts to the point or place of beginning.

B. Real Estate subject to the Railway Company's General and Collateral Trust Mortgage.

Ninety-sixth Street and First Avenue property.

All that certain block, piece or parcel of land with the buildings and improvements thereon, situate, lying and being in the Twelfth Ward of the City of New York and bounded and described as follows, viz.: Northerly by the middle line of Ninety-sixth Street; southerly by the middle line of Ninety-fifth Street; westerly by the middle line of First Avenue, and easterly, by the East or Harlem River. And also the land under water, and all preemptive rights in, upon and under the East or Harlem River, lying in front of the above described block; being the premises conveyed by Daniel B. Hasbrouck and Sarah Hasbrouck, his wife, to the Railway Company, by deed dated April 7, 1897, and recorded in the Office of the Register of the City and County of New York, in Block Series (Conveyances), Section 5, Liber 49, page 25 and indexed under Block Number 1575.

Avenue C Depot Property.

All those two certain lots, pieces or parcels of lands, with the buildings and improvements thereon, situate in the Eleventh Ward of the City of New York, and which taken together are bounded and described as follows: Beginning at the northerly line or side of Eleventh Street, distant one hundred eighty-three (183) feet easterly from the corner formed by the intersection of the northerly side of Eleventh Street with the easterly side of Avenue C, as the same is now laid out and widened, which said widening was not noted or allowed for on the map hereinafter mentioned, and running thence northerly and parallel with Avenue C one hundred three (103) feet three (3) inches to the Centre line of the block between Eleventh

Street and Twelfth Street; thence easterly along said centre line of the block parallel with Eleventh Street fifty (50) feet; thence southerly and parallel with Avenue C one hundred three (103) feet three (3) inches to the northerly side or line of Eleventh Street, and thence westerly along the same fifty (50) feet to the point or place of beginning.

All that certain lot, piece or parcel of land with the buildings thereon erected, situate, lying and being in the Eleventh Ward in the City of New York, and bounded and described as follows: Beginning at a point on the Northerly side of Tenth Street distant two hundred thirty-three (233) feet easterly from the northeasterly corner of Tenth Street and Avenue C, and thence northerly and parallel with Avenue C eighty (80) feet to the point or place of beginning, running northerly from that point and parallel with Avenue C fourteen (14) feet nine (9) inches; thence easterly and parallel with Tenth Street twenty-five (25) feet; thence southerly and again parallel with Avenue C fourteen (14) feet nine (9) inches; thence westerly and again parallel with Tenth Street, twenty-five (25) feet, to the point or place of beginning.

All that certain piece of land, with the buildings thereon situate, lying and being in the Eleventh Ward of the City of New York on the northerly side of Tenth Street and beginning at a point two hundred eight (208) feet distant easterly from the northeasterly corner of Tenth Street and Avenue C, and running thence easterly along the northerly side of Tenth Street, twenty-five (25) feet; thence northerly on a line parallel with Avenue C ninety-four (94) feet nine and one-half (9½) inches, to the centre line of the block between Tenth Street and Eleventh Street; thence westerly on a line parallel with Tenth Street twenty-five (25) feet; thence southerly on a line parallel with Avenue C ninety-four (94) feet nine and one-half (9½) inches, to Tenth Street, aforesaid, the place of beginning.

Also, six other lots, pieces and parcels of ground and premises, with the buildings thereon, situate, lying and

being in the Eleventh Ward of the City of New York and bounded and described as follows : Beginning at a point on the southerly side of Eleventh Street distant one hundred eight (108) feet easterly from the southeasterly corner of Avenue C and Eleventh Street ; and running thence easterly and along the southerly side of Eleventh Street seventy-five (75) feet ; thence southerly and parallel with Avenue C one hundred eighty-nine (189) feet seven (7) inches, more or less, to the northerly side of Tenth Street ; thence westerly and along the northerly side of Tenth Street seventy-five (75) feet, and thence northerly and parallel with the Avenue C one hundred eighty-nine (189) feet seven (7) inches, more or less, to the place of beginning.

All those two certain lots, pieces or parcels of land, with the buildings thereon, situate, lying and being on the northerly side of Eleventh Street, in the Eleventh Ward of the City of New York, and known and distinguished on a certain map filed by Frederick De Puyster, Master in Chancery in the Office of the Register of the City and County of New York, entitled " map of two hundred and forty lots of land situate at Burnt Mill Point in the Eleventh Ward of the City of New York," by the numbers Eighty-five (85) and Eighty-six (86) and more fully bounded and described as follows : Beginning at a point on the northerly side of Eleventh Street in said city, distant two hundred thirty-three feet (233) easterly from the northeasterly corner of Avenue C and Eleventh Street, running thence northerly and parallel with Avenue C one hundred three (103) feet (3) inches ; thence easterly and parallel with Eleventh Street fifty (50) feet ; thence southerly and parallel with Avenue C one hundred three (103) feet three (3) inches to Eleventh Street, and thence westerly along Eleventh Street fifty (50) feet to the place of beginning. Also, all those four certain lots, pieces or parcels of land situate, lying and being in the Eleventh Ward of the City of New York, bounded and described as follows : Beginning at a point on the southerly side of Eleventh Street distant one hundred eighty-

three (183) feet easterly from the easterly line of Avenue C, running thence southerly and parallel with Avenue C ninety-four (94) feet nine (9) inches to the centre line of the block, running thence easterly along said centre line one hundred (100) feet; thence northerly and parallel with Avenue C ninety-four (94) feet nine (9) inches to the southerly line or side of Eleventh Street; thence westerly along the southerly line of Eleventh Street one hundred (100) feet to the place of beginning.

No. 413 East Tenth Street Property.

All that certain lot, piece or parcel of ground, with the building thereon erected, which on a certain map filed by Frederick De Puyster, Master in Chancery (with his certificate endorsed thereon, dated February 1, 1837) in the office of the Register for the City and County of New York, entitled "Map of 240 lots of land situated at Burnt Mill Point in the Eleventh Ward of the City of New York," consisting of one lot of land thereon designated by the number "144" (one hundred and forty-four), bounded as follows, *viz.:* Commencing at a point on the northerly side of Tenth Street, distant one hundred and ninety-three (193) feet southeasterly from the northeasterly corner of Avenue C and Tenth Street; running thence northeasterly along lot 145 on said map ninety-four (94) feet nine (9) inches to the centre of the block; thence southeasterly along the centre of the block twenty-five (25) feet to lot 143 on said map; thence southwesterly along said lot 143 ninety-four (94) feet nine (9) inches to Tenth Street, and thence northwesterly along Tenth Street twenty-five (25) feet to the point of beginning.

Lenox Avenue and One hundred and Sixteenth Street Property.

All those certain lots, pieces or parels of land situate lying and being in the Twelfth Ward of the

City of New York, and which taken together are bounded and described as follows : Commencing at the corner formed by the intersection of the northerly line of One hundred and sixteenth Street with the westerly side of Lenox Avenue (formerly Sixth Avenue), running thence northerly along said westerly line of Lenox Avenue two hundred one (201) feet ten (10) inches to the southerly line of One hundred and seventeenth Street; thence westerly along said southerly line of One hundred and seventeenth Street two hundred (200) feet; thence southerly and parallel with Lenox Avenue two hundred one (201) feet ten (10) inches to the northerly line of One hundred and sixteenth Street; thence easterly along said northerly line of One hundred and sixteenth Street two hundred (200) feet to the point or place of beginning. Being the same premises conveyed by The Metropolitan Traction Company of New York to the Lexington Avenue and Pavonia Ferry Railroad Company by deed dated January 15, 1894, and recorded in the Office of the Register of the City and County of New York in Block Series (Conveyances) Section 7, Liber 20, at page 456 and indexed under Block Number 1901, subject, however, to the existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

Lexington Avenue and Ninety-ninth Street Property.

All that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of New York, and bounded and described as follows: Beginning at the northeasterly corner of Fourth Avenue and Ninety-ninth Street, running thence northwardly along the easterly line of Fourth Avenue two hundred one (201) feet ten (10) inches to the southerly line of One hundredth Street; thence eastwardly along the southerly line of One hundredth Street four hundred five (405) feet; thence southwardly and parallel with Fourth Avenue two hundred one (201) feet ten (10)

inches to the northerly line of Ninety-ninth Street, and thence westwardly along the northerly line of Ninety-ninth Street four hundred five (405) feet to the point or place of beginning. Being the same premises conveyed by The Metropolitan Traction Company of New York to the Lexington Avenue and Pavonia Ferry Railroad Company by deed dated January 15, 1894, and recorded in the Office of the Register of the City and County of New York, in Block Series (Conveyances), Section 6, Liber 22, page 157 and indexed under Block Number 1627. Subject, however, to the existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

Lexington Building.

All those certain lots, pieces or parcels of land with the building or buildings thereon erected, situate, lying and being in the Twelfth Ward of the City of New York, bounded and described as follows: Commencing on the northerly side of Twenty-fifth street, at a point distant one hundred seven (107) feet six (6) inches westerly from the corner formed by the intersection of the northerly line of Twenty-fifth Street with the westerly line of Third Avenue, and running thence westerly along the northerly line of Twenty-fifth Street, one hundred eighty-seven (187) feet six (6) inches or thereabouts, and thence running northerly and parallel, or nearly so, with Third Avenue one hundred ninety-seven (197) feet five (5) inches to the southerly side of Twenty-sixth Street and thence running easterly along the southerly side of Twenty-sixth Street one hundred eighty-six (186) feet, or thereabouts, and thence running southerly and parallel with Third Avenue ninety-eight (98) feet nine (9) inches to the centre line of the block between Twenty-fifth and Twenty-sixth Streets, and thence running easterly along the said centre line of the block one (1) foot six (6) inches, thence running southerly and parallel with Third Avenue, ninety-eighth (98) feet nine

(9) inches to the northerly line of Twenty-fifth Street, being the same premises which were heretofore conveyed by the following conveyances, viz. :

Deed of Ruth A. Brown to The Metropolitan Traction Company of New York, dated May 31, 1894, and recorded in the Office of the Register of the City and County of New York on June 4, 1894, in Block Series (Conveyances) Section 3, Liber 30, page 128 and indexed under Block Number 881. Deeds of John D. Crimmins to The Metropolitan Traction Company of New York, dated respectively July 13, 1893, February 21, 1894, and August 31, 1894, and respectively recorded in said Register's Office on July 24, 1893, March 5, 1894, and October 18, 1894, in Block Series (Conveyances) Section 3, Liber 21, page 408, Liber 26, page 113 and Liber 31, page 57 and all indexed under Block Number 881. Deed of Alonzo C. Munson to The Metropolitan Traction Company of New York, dated June 15, 1894, and recorded in said Register's Office on June 18, 1894, in Block Series (Conveyances) Section 3, Liber 29, page 176 and indexed under Block Number 881.

Subject, however, to an existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

Belt Line Repair Shops.

All that certain lot, piece or parcel of land, together with the buildings and improvements thereon, lying and being in the Twenty-second Ward of the City of New York, situate on the north side of West Fifty-third Street, between Tenth and Eleventh Avenues, and known as lot number 768 on a certain map of John Hoppers's Estate, filed in the Register's Office of the City of New York on December 31, 1864, as map No. 660 and being bounded and described as follows : Beginning at a point on the northerly side of Fifty-third Street distant four hundred and seventy-five (475) feet westwardly from the westerly side of Tenth Avenue,

and running thence westwardly along said northerly side of Fifty-third Street twenty-five (25) feet; thence northerly on a line parallel with Tenth Avenue forty-eight (48) feet three and three-quarters (3¾) inches; thence southwesterly twenty-five (25) feet or thereabouts to a point in a line distant forty-four (44) feet ten (10) inches northerly from the northerly side of Fifty-third Street, and thence southerly on a line parallel with Tenth Avenue forty-four (44) feet ten (10) inches to the northerly side of Fifty-third Street to the point or place of beginning. Being the same premises conveyed to the Metropolitan Traction Company of New York by Bertha Volkening by deed dated March 30, 1893, and recorded in the office of the Register of the City and County of New York on March 30, 1893, in Block Series (Conveyances) Section 4, Liber 21, page 283.

And also all those certain lots, pieces or parcels of land, together with the buildings and improvements erected thereon, situate, lying and being in the Twenty-second Ward of the City of New York and bounded and described as follows: Beginning at a point three hundred (300) feet easterly from the southeasterly corner of Eleventh Avenue and Fifty-fourth Street; thence easterly along the line of Fifty-fourth Street twenty-five (25) feet; thence southerly parallel with Eleventh Avenue, through the centre of the block to the line of property now or formerly owned by Garrit H. Striker one hundred fifty-six (156) feet; thence northwesterly along the line of said property twenty-five (25) feet three and one-quarter (3¼) inches; thence northerly parallel to Eleventh Avenue one hundred fifty-two (152) feet six and one-quarter (6¼) inches, to the point or place of beginning, be the said several dimensions more or less. Being the same premises conveyed by Andrew Doerrschuck and Annie, his wife, to The Metropolitan Traction Company of New York, by deed dated March 6, 1893, and recorded in the Office of the Register of the City and County of New York, on March 8, 1893, in Block Series (Conveyances)

Section 4, Liber 20, page 296 and indexed under Block Number 1082.

Chambers Street Leasehold.

All the leasehold rights of the Railway Company in and to all that certain lot, piece or parcel of land situate, living and being in the Seventh Ward of the City of New York, bounded and described as follows: Beginning at the corner formed by the intersection of the southerly line of Cherry Street with the westerly line of East Street, and running thence southerly along the westerly line of East Street one hundred (100) feet three (3) inches; thence westerly on a line parallel or nearly so with the southerly line of Cherry Street two hundred forty-five (245) feet six (6) inches; thence northerly on a line parallel or nearly so with the westerly line of East Street twenty-six (26) feet one (1) inch; thence easterly parallel or nearly so with said line of Cherry Street nineteen (19) feet eleven (11) inches; thence northerly parallel or nearly so with the said line of East Street seventy-five (75) feet to the said line of Cherry Street; thence easterly along said last mentioned line two hundred twenty-five (225) feet to the place of beginning, and known by the Street Number 505 Cherry Street. Also all the leasehold rights of the Railway Company in and to all that certain lot, piece or parcel of land situate lying and being on Cherry Street in said City immediately adjoining the above described premises on the westerly side thereof; which said lot is about twenty (20) feet in width in front and rear and seventy-five (75) feet in depth on each side.

Twenty-fourth Street Leasehold.

All the leasehold rights of the Railway Company in and to all those ten certain lots of ground, situate, lying and being in the Sixteenth Ward of the City of New York, distinguished on a map of certain lands of

Clement C. Moore, situate at Greenwich, in the City of New York, recorded in the Office of the Register of the City and County of New York, in Liber 634 of Conveyances, page 411, by the numbers 905 (nine hundred and five) to 908 (nine hundred and eight) and 936 (nine hundred and thirty-six) to 941 (nine hundred and forty-one) all inclusive; and bounded together as follows, *viz.*: Southeastwardly in front by Eleventh Avenue; southwestwardly by the half distance line between Twenty-third Street and Twenty-fourth Street; northwestwardly by lot numbered on the said map 935 (nine hundred and thirty-five) and northwestwardly by the said Twenty-fourth Street. Containing together in width along the said Eleventh Avenue and on the northwestwardly side thereof, ninety-eight (98) feet eight (8) inches, and on the northeastwardly and southwestwardly sides there of, twohundred twenty-five (225) feet, be the said several measurements more or less.

III.

STREET SURFACE RAILROADS AND RAILWAY ROUTES IN THE COUNTY OF NEW YORK, CITY OF NEW YORK, AND STATE OF NEW YORK, OPERATED BY THE RAILWAY COMPANY AS LESSEE, UNDER THE LEASES HEREINAFTER MENTIONED:

LINES LEASED TO AND OPERATED BY METROPOLITAN STREET RAILWAY COMPANY.

Lease of the Bleecker Street and Fulton Ferry Railroad Company to the Twenty-third Street Railway Company.

Dated January 10, 1876, by which all the railroads and railroad routes of the lessee for the term of ninety-nine years, said lease including the railroad operated along the streets described as follows: Commencing at Twenty-third Street and Eleventh Avenue, running along Eleventh Avenue to Fourteenth Street to

Fourth Avenue; and also commencing at the intersection of Fourteenth Street and Hudson Street and thence running southerly and easterly through the city upon various streets, to Fulton Ferry.

Lease of the Broadway and Seventh Avenue Railroad Company to The Hudson, West Street and Pavonia Ferry Railroad Company.

Dated May 13, 1890, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor and any extensions of said charter of the lessor and any extensions of said charter, said lease including the railroad operated along the streets, described as follows: Commencing at Fifty-ninth Street and Seventh Avenue; running thence through and along Seventh Avenue to Broadway; thence through and along Broadway to Fifteenth Street; and thence through and along University Place and certain other streets to Barclay Street; and thence through Barclay Street and Park Place to Broadway; and through Seventh Avenue, from Broadway to Greenwich Avenue to Macdougal Street to West Fourth Street, and through Thompson and Sullivan Streets to West Broadway; and also from Broadway and Twenty-Third Street, through Twenty-third Street to Lexington Avenue, thence through Lexington Avenue to Twenty-seventh Street.

Lease of the Central Park, North and East River Railroad Company to The Metropolitan Cross Town Railway Company and the Houston, West Street and Pavonia Ferry Railroad Company.

Dated October 14, 1892, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term

of the charter of the lessor and any extensions of said charter, said lease including the railroad operated along the streets described as follows: From Tenth Avenue and Fifty-ninth Street through Tenth Avenue, West Street and other Streets to the South Ferry; and also from Tenth Avenue at Fifty-ninth Street along Fifty-ninth Street to First Avenue; and thence through various other streets and avenues to the said South Ferry.

Lease of The Eighth Avenue Railroad Company to Metropolitan Street Railway Company.

Dated November 23, 1895, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of ninety-nine years from January 1, 1896, said lease including the railroad operated along the streets described as follows: Commencing at or near the intersection of Vesey Street and Broadway, thence running through Vesey Street to College Place, and through College Place, Church Street and Chambers Street to West Broadway, and through West Broadway to Canal Street, and through Canal Street to Hudson Street, and through Hudson Street to Eighth Avenue, and through and along Eighth Avenue to the point where the street or road commonly called the McCombs Dam Road intersects or meets Eighth Avenue; thence through and along the said McCombs Dam Road to or near the westerly end of the bridge known as McCombs Dam Bridge, with an extension or branch running from the junction of West Broadway and Canal Street to Broadway, and also the extension of its railroad from the junction of McCombs Dam Road along Eighth Avenue to the Harlem River.

Lease of The Forty-Second Street and Grand Street Ferry Railroad Company to The Metropolitan Crosstown Railway Company and The Houston, West Street and Pavonia Ferry Railroad Company.

Dated April 6, 1893, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor and any extensions of the charter, said lease including the railroad operated along the streets described as follows: Commencing at the ferry at the western extremity of Forty-second Street; thence through and along Forty-second Street, with a double track to Tenth Avenue; through and along Tenth Avenue to Thirty-fourth Street; through and Thirty-fourth Street, with a double track, to Broadway; through and along Broadway to Twenty-third Street; through and along Twenty-third Street to Fourth Avenue; through and along Fourth Avenue and Union Square, with a double track, to Fourteenth Street; through and along Fourteenth Street, with a double track, to Avenue A; through and along Avenue A, with a double track, to Second Street, and thence along Avenue A, with a single track, to First Street; through and along First Street and Houston Street, with a single track, to Cannon Street; through and along Cannon Street, with a single track, to Grand Street; through and along Grand Street, with a single track, to Goerck Street, and thence through and along Grand Street, with a double track, to Grand Street ferry, at the foot of Grand Street, East River; and also from the intersection of Second Street and Avenue A through and along Second and Houston Streets, with a single track, to Goerck Street; thence through and along Goerck Street, with a single track, to Grand Street to Grand Street ferry.

Lease of The New York and Harlem Railroad Company (city line) to the Metropolitan Street Railway Company.

Dated June 11, 1896, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of nine hundred and ninety-nine years from July 1, 1896; said lease including the railroad operated along the streets described as follows:

Commencing at the intersection of Park Row, Ann Street and Broadway, to Centre Street, to Grand Street and Broom Street to Bowery, to Fourth Avenue, to Forty-second Street, to Madison Avenue, to One hundred and thirty-eighth Street; also on Eighty-sixth Street from Madison Avenue to First Avenue; on First Avenue to Ninety-third Street to Astoria Ferry; also extension on Thirty-second and Thirty-third Streets, Lexington Avenue and Thirty-fourth Street, from Fourth Avenue to Thirty-fourth Street Ferry.

Lease of The Ninth Avenue Railroad Company to The Houston, West Street and Pavonia Ferry Railroad Company.

Dated March 12, 1892, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of ninety-nine years, said lease including the railroad operated along the streets described as follows: Commencing at the intersection of Broadway and Fulton Street, running through Fulton Street to Greenwich Street; thence through and along Greenwich Street to Ninth Avenue; thence through and along Ninth Avenue and Columbus Avenue to the Grand Boulevard; thence through and along the said Boulevard to Amsterdam Avenue (formerly Tenth Avenue), and thence along Amsterdam Avenue to Manhattan Street, returning through Amsterdam Avenue, the Boulevard, Columbus Avenue, Ninth Avenue, Gansevoort Street and Wash-

ington Street to Fulton Street; thence through Fulton Street to Broadway to the place of beginning; also on Fifty-third Street from Seventh Avenue to Ninth Avenue.

Lease of The Second Avenue Railroad Company to Metropolitan Street Railway Company.

Dated January 28, 1898, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor and any extensions of said charter, said lease including the railroad operated along the streets described as follows: Upon First Avenue and Second Avenue, through various streets and avenues in the City of New York from the Harlem River to Peck Slip, with extensions and connections from Eighth Avenue through the transverse road in Central Park, along Eighty-fifth Street, connecting with Madison Avenue. Also an extension from Bowery through Worth Street to Broadway. Also an extension from Second Avenue and Tenth Street, through Tenth Street and Astor Place to Broadway.

Lease of Sixth Avenue Railroad Company to The Houston, West Street and Pavonia Ferry Railroad Company.

Dated February 1, 1892, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of eight hundred years, said lease including the railroads operated along the streets described as follows: Commencing at the intersection of Fifty-ninth Street and Sixth Avenue, running thence southerly along Sixth Avenue to Carmine Street; thence through Carmine Street to Varick Street; thence through Varick Street to Canal Street; thence through Canal Street to West Broadway; and also from the intersection of West

Broadway and Canal Street, thence through and along West Broadway to Vesey Street; thence through Vesey Street to Broadway; and also through Church Street to Chambers Street, and through Chambers Street to Broadway; and also upon and along Lenox Avenue from One hundred and tenth Street to the Harlem River, also on West Third Street from Carmine to Sullivan Streets. Also on Fifty-third Street from Sixth Avenue to Seventh Avenue.

Lease of the Twenty-third Street Railway Company to The Houston, West Street and Pavonia Ferry Railroad Company.

Dated April 25, 1893, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor, and any extensions of said charter, said lease including the railroad operated along the streets described as follows: Upon Twenty-third Street from the North River to the East River, and upon Second Avenue from its intersection with Twenty-third Street to Twenty-ninth Street, and thence through Twenty-ninth Street, and also through Twenty-eighth Street to First Avenue, and thence through First Avenue to Thirty-fourth Street.

Lease of the Third Avenue Railroad Company to Metropolitan Street Railway Company.

Dated April 13, 1900, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of nine hundred and ninety-nine years, said lease including the railroad operated along the streets described as follows: Beginning at the intersection of Park Row and Broadway; thence extending along Park Row, the Bowery, Third Avenue to the Harlem River; also extending from the North River at the foot of One hundred and thirtieth Street, thence through One hundred and

thirtieth Street, Manhattan Street and One hundred and twenty-fifth Street to the East River; also extending from One hundred and twenty-fifth Street through Amsterdam Avenue to the terminus of said Avenue; and also on One hundred and thirtieth Street from Third Avenue to a point at or near Lexington Avenue.

General description of property and after acquired property clause.

TOGETHER WITH ALL AND SINGULAR the improvements on said properties, and all and singular the railroads, lands, buildings, structures, fixtures, privileges, franchises, rights of way, trackage rights, contracts, consents, leaseholds, easements and other rights and interest now owned by the Railway Company; also all and singular the tracks, side tracks or sidings, switches, rails, bridges, fences, buildings, depots, station-houses, power-houses, car-houses, machine shops, repair shops and other shops, and all other buildings, improvements, erections and structures, and all dynamos, belting, engines, boilers, regulators, meters, poles, trolleys, conduits, feeders, cables, wires, switchboards, lamps and machinery for producing, generating and distributing electricity or power; and also all and singular the rolling stock, equipment, motors, engines, tenders, carriages, cars, trucks, horses, harness, tools, implements, furniture, fixtures, machinery, materials, coal, wood, oil, fuel and other supplies; and also all maps, drawings, profiles, licenses, records, deeds, contracts and agreements, patents and patented inventions and processes now owned by the Railway Company, all of which personal property is hereby declared to be fixtures and appurtenances of said railroads; and also all present or future improvements and additions made or to be made upon and to any or all of said railroads or property, real and personal, and any and all equipment therefor and renewals or replacements of the same or of any part thereof or of the appurtenances; and also all and every other railroad, which the Railway Company shall hereafter acquire or construct by means of the proceeds

of any of the bonds hereby secured, and all power-houses, real-estate, equipment and other property, real or personal, appurtenant thereto.

AND ALL AND SINGULAR the tolls, fares, rents, issues, earnings, income, profits and other benefits and advantages of, or in any wise growing out of, all or any of the said several railroads, franchises and property, and all and singular the tenements, hereditaments and appurtenances to any of the said railroads or property belonging, or in any wise appertaining, and the reversion or reversions, remainder or remainders thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well at law as in equity, of the Railway Company, in and to the same and every part and parcel thereof with the appurtenances.

IV.

Pledge of shares of stock.

AND ALSO ALL THE RIGHT, TITLE AND INTEREST of the Railway Company in and to the following shares of stock which are now pledged and deposited with the Guaranty Trust Company of New York under the mortgage dated February 1, 1897, from the Railway Company to said Guaranty Trust Company of New York, as Trustee, securing the General Mortgage and Collateral Trust Five Per Cent. Gold Bonds of the Railway Company, viz.:

1. Fourteen thousand (14,000) shares of the capital stock of The Broadway and Seventh Avenue Railroad Company of the par value of one hundred dollars ($100) each.

2. Four thousand (4,000) shares of the capital stock of the Forty-second Street and Grand Street Ferry Railroad Company of the par value of one hundred dollars ($100) each.

3. Three thousand (3,000) shares of the capital stock of the Central Park, North and East River Railroad

Company of the par value of one hundred dollars ($100) each.

4. Nine thousand, nine hundred (9,900) shares of the capital stock of the Thirty-fourth Street Cross-Town Railway Company, of the par value of one hundred dollars ($100) each.

Habendum. TO HAVE AND TO HOLD all and singular said railroads, leaseholds, property and franchises, unto the Trustee, its successors in the trust, and its or their assigns, forever;

SUBJECT, NEVERTHELESS, as to the property embraced therein respectively, to the lien thereon of the mortgages or deeds of trust securing the issues of bonds in paragraph (2) of Article Second hereof specified; and as to said shares of stock, to the said mortgage under which the same are deposited; and subject further to the said lease of said railroads, railroad routes, properties and franchises to the said Interurban Street Railroad Company, and to all and singular the terms and provisions thereof;

Grant in trust. BUT IN TRUST NEVERTHELESS for the equal and proportionate benefit and security of all holders of the bonds and coupons issued and to be issued under and secured by this indenture, and for the enforcement of the payment of said bonds and interest, when payable, according to the tenor, purport and effect of such bonds and coupons, and to secure the performance and observance of and compliance with the covenants and conditions of this indenture, without preference, priority or distinction as to lien or otherwise of one bond over any other bond by reason of priority in the issue, sale or negotiation thereof, or by reason of the purpose of its issue, so that each and every bond issued or to be issued hereunder shall have the same right, lien and privilege under and by virtue of this indenture, and so that the principal and interest of every such bond shall, subject to the terms hereof, be equally and

proportionately secured hereby, as if all had been duly issued, sold and negotiated simultaneously with the execution and delivery hereof.

THIS INDENTURE FURTHER WITNESSETH that the Railway Company has agreed and covenanted, and hereby does agree and covenant, with the Trustee, and with the respective holders from time to time of the said bonds and coupons, or any thereof, as follows, that is to say:

Issue of bonds.

ARTICLE FIRST.—The coupon and registered bonds issued under and secured by this indenture, together with the interest coupons pertaining to the coupon bonds, shall be substantially of the tenor and purport above recited, and shall be known as the "Refunding One Hundred Year Gold Bonds" of the Railway Company. The coupon bonds shall be of the denomination of $1,000 each, and the registered bonds shall be of the denomination of $1,000 each or of such multiples of $1,000 as the Railway Company may from time to time authorize by resolution of its board of directors, and said bonds, as well as the temporary bonds hereinafter mentioned, shall bear such rate of interest not exceeding four per cent. per annum, as the board of directors of the Railway Company may from time to time determine as to any bonds not actually issued. Registered bonds shall bear interest only from the first day of April or October, as the case may be, next preceding their respective dates. Said bonds shall be numbered, and shall from time to time be executed on behalf of the Railway Company by its president or a vice-president, and its corporate seal shall be thereunto affixed and attested by its secretary or an assistant secretary. The bonds shall then be delivered to the Trustee for certification by it, and the Trustee shall thereupon certify and deliver said bonds to the Railway Company, or upon its order, as hereinafter in Article Second hereof provided, and not otherwise. In case the officers who shall have signed and sealed any of said bonds shall cease to be such officers of the Railway

Execution of bonds.

Company before the bonds so signed and sealed shall have been actually certified by the Trustee or delivered, such bonds may, nevertheless be adopted by the Railway Company, and, upon the written request of the Railway Company, be certified and delivered, subject to the provisions of Article Second hereof, as though the persons who signed and sealed such bonds had not ceased to be officers of the Railway Company. The coupons to be attached to coupon bonds shall be authenticated by the engraved signature of the present treasurer or of any future treasurer of the Railway Company, and the Railway Company may adopt and use for that purpose the engraved signature of any person who shall have been such treasurer, notwithstanding the fact that he may have ceased to be such treasurer at the time when such bonds shall be actually certified and delivered or issued. The first coupons shall be payable October 1, 1902, and shall represent interest to that date from April 1, 1902. The Railway Company and the Trustee may deem and treat the bearer of any coupon bond hereby secured, which shall not at the time be registered as hereinafter authorized, and the bearer of any coupon for interest on any such bond, whether registered or not, as the absolute owner of such bond or coupon for the purpose of receiving payment thereof and for all other purposes whatsoever, and neither the Railway Company nor the Trustee shall be affected by any notice to the contrary. Only such bonds as shall bear thereon endorsed a certificate substantially in the form hereinbefore recited, executed by the Trustee, shall be secured by this indenture or entitled to any lien, right, or benefit hereunder; and such certificate of the Trustee upon any such bond executed on behalf of the Railway Company shall be conclusive evidence that the bond so certified has been duly issued hereunder and that the holder is entitled to the benefit of the trusts hereby created. Before certifying or delivering any coupon bond (except in exchange for scrip as hereinafter provided), all coupons

Coupons.

appertaining thereto then matured shall be cut off, canceled and delivered by the Trustee to the Railway Company. The aggregate amount of all the bonds which may be certified, issued and outstanding under this indenture or entitled to the security hereof shall not in any event exceed the sum of sixty-five million dollars ($65,000,000) face value of the principal of said bonds at any one time outstanding.

Total authorized issue $65,000,000.

The Railway Company further agrees and covenants that it will keep, at an office or agency to be maintained by it in the City of New York, or at some bank or trust company in said city, a sufficient register or registers of bonds issued hereunder, which shall at all reasonable times be open for inspection by the Trustee and any holder of bonds issued hereunder; and that, upon presentation for such purpose, the Railway Company will register or cause to be registered therein, under such reasonable regulations as it may prescribe, any bonds issued under the provisions hereof. The holder of any coupon bond issued hereunder may have the ownership thereof registered on said books, and such registry noted on the bonds, after which no transfer shall be valid unless made on the said books by the registered holder thereof, in person or by his attorney duly authorized, and similarly noted on the bond; but the same may be discharged from registry by being in like manner transferred to bearer, and thereupon transferability by delivery shall be restored; but such bond may again and from time to time be registered or transferred to bearer as before. Such registration, however, shall not affect the negotiability of the coupons, but every such coupon shall continue to pass by delivery, and shall remain payable to bearer. The holder of any coupon bond or bonds may, at his option, at any time surrender the same for cancellation with all unmatured coupons belonging thereto and receive in exchange therefor a like amount in registered bonds without coupons, as hereinafter provided; or the registered holder of any registered bond or bonds may, at his option, at any time, surrender the same for cancel-

Registration of bonds.

lation and receive in exchange therefor a like amount in coupon bonds, as hereinafter provided.

Exchange of coupon for registered bonds.

Whenever any coupon bond or bonds issued under and secured by this indenture, together with all unmatured coupons thereto belonging, shall be surrendered for exchange for registered bonds, the Railway Company shall issue, and the Trustee shall certify and deliver, in exchange for such coupon bond or bonds, a like amount in registered bonds without coupons and bearing the same rate of interest. Whenever any registered bond shall be surrendered for exchange for a coupon bond or bonds, the Railway Company shall issue, and the Trustee shall certify and deliver, in exchange for such registered bond, a like amount in coupon bonds, bearing the same rate of interest, with coupons attached maturing on and after the next ensuing interest due date on such surrendered registered bond. Whenever any registered bond shall be surrendered for transfer, the Railway Company shall issue, and the Trustee shall certify and deliver to the transferee, a like amount in new registered bonds bearing the same rate of interest. In every case of such exchange or transfer, the said Trustee shall forthwith cancel the surrendered bond or bonds and coupons, and deliver the same to the Railway Company, but the numbers shall be preserved by the Railway Company so as to identify and show for what registered or coupon bonds the registered bonds have been exchanged, and for what registered bonds the coupon bonds have been exchanged. The numbers of the coupon bonds so to be issued shall correspond with the numbers of any coupon bonds theretofore surrendered for registered bonds, or may be any unissued numbers of the authorized issue. For any exchange of coupon bonds for registered bonds, or for any transfer of registered bonds, or for any exchange of registered bonds for coupon bonds, the Railway Company may make a charge not exceeding one dollar for each new registered or coupon bond issued upon such exchange or transfer.

Exchange of registered bonds for coupon bonds.

Transfer of registered bonds.

Issue of temporary bonds.

Until the said coupon and registered bonds intended to be secured hereby can be engraved and prepared, the Railway Company may execute and deliver printed or lithographed bonds, dated, and bearing interest from, April first 1902, registered or negotiable by delivery, and substantially of the tenor of the bonds hereinbefore recited, except that no coupons shall be attached to said bonds; and the same may be for the payment of one thousand dollars ($1,000) or any multiple thereof, as the Railway Company shall determine. All such printed or lithographed bonds shall bear upon their face the words "Temporary Refunding One Hundred Year Gold Bond," and shall be duly certified by the Trustee in the same manner as the bonds hereinbefore described, and such certificate shall be conclusive evidence that the bond so certified has been duly issued hereunder, and that the holder is entitled to the benefit of the trusts hereby created. Such printed or lithographed bonds duly issued and certified hereunder shall be exchangeable for engraved bonds bearing the same rate of interest to be issued hereunder, and upon any such exhange, said printed or lithographed bonds shall be forthwith canceled by the Trustee and delivered to the Railway Company. Until so exchanged, the said printed or lithographed bonds shall in all respects be entitled to the lien and security of these presents, as bonds issued and certified hereunder; and interest when and as payable shall be paid and endorsed thereon.

Issue of certificates or scrip.

The Railway Company may also issue certificates or scrip entitling the bearer to fractional amounts less than one thousand dollars of the coupon bonds to be issued hereunder and secured hereby. Such certificates or scrip, when presented to the Railway Company in amounts of one thousand dollars, or any multiple of one thousand dollars, shall be exchangeable for a like amount, face value, of the coupon bonds hereby secured, with all coupons maturing after the date of the scrip attached, but in the meantime the said certificates or scrip shall not bear any interest.

Replacing bonds mutilated or destroyed.

In case any coupon bond issued under this indenture, with the coupons thereto appertaining, or any registered bond without coupons, shall become mutilated or be destroyed, the Railway Company, in its discretion may issue, and thereupon the Trustee may certify and deliver a new bond of like tenor and date, bearing the same serial number as the one mutilated or destroyed, in exchange and substitution for and upon cancellation of the mutilated bond or coupons, or in lieu of and substitution for the bond or coupons, if destroyed. The applicant for a substituted bond or coupons shall furnish to the Railway Company and to the Trustee evidence of the destruction of such bond or coupons so destroyed, which evidence shall be satisfactory to the Railway Company and to the Trustee in their discretion; and said applicants shall also furnish indemnity satisfactory to both the Railway Company and the Trustee in their discretion.

Appropriation of bonds.

ARTICLE SECOND.—The bonds issued and to be issued under and secured by this indenture shall be appropriated as follows:

The first $11,000,000 of bonds.

(1.) $11,000,000 face value of said bonds shall be certified and delivered to the Railway Company, or upon its order, on filing with the Trustee from time to time a copy of a resolution of the board of directors of the Railway Company, certified under its corporate seal by its secretary or an assistant secretary, requesting such delivery.

$48,196,000 to be issued on deposit of outstanding old bonds and collateral bonds.

(2.) $48,196,000 face value of said bonds shall be issued from time to time, and shall be certified and delivered by the Trustee, when and as called for by the Railway Company, against the deposit with the Trustee, as security for the bonds issued and to be issued hereunder, of an equal amount, face value, of any of the following mentioned outstanding old bonds and collateral bonds, or upon the cancellation and de-

posit with the Trustee of an equal amount of outstanding old bonds, that is to say:

A.

BONDS SECURED BY LIEN UPON PROPERTIES OWNED BY THE RAILWAY COMPANY.		Description of outstanding old bonds and collateral bonds.
General Mortgage and Collateral Trust Five Per Cent. Gold Bonds of the Metropolitan Street Railway Company, due February 1, 1997, secured by mortgage to the Guaranty Trust Company of New York, Trustee, dated February 1, 1897, to the aggregate amount of	$12,500,000	
First Mortgage Five Per Cent. Gold Bonds of The Lexington Avenue and Pavonia Ferry Railroad Company, due September 1, 1993, secured by mortgages to Central Trust Company of New York, Trustee, dated August 24, 1893, and March 1, 1895, to the aggregate amount of	5,000,000	
First Mortgage Five Per Cent. Gold Bonds of The Columbus and Ninth Avenue Railroad Company, due September 1, 1993, secured by mortgages to The New York Guaranty and Indemnity Company, Trustee, dated August 24, 1893, and March 1, 1895, to the aggregate amount of	8,000,000	
First Mortgage Five Per Cent. Bonds of The Broadway Surface Railroad Company, due July 1, 1924, secured by mortgage to William H. Hays, Trustee, dated July 1, 1884, to the aggregate amount of	1,500,000	
Second Mortgage Five Per Cent. Bonds of The Broadway Surface Railroad Company, due July 1, 1905, secured by mortgage to Francis A. Palmer, Trustee, dated June 1, 1885, to the aggregate amount of	1,000,000	
Five Per Cent. First Mortgage Bonds of The Metropolitan Crosstown Railway Company, due April 1, 1920, secured by mortgage to the New York Security and Trust Company, Trustee, dated April 1, 1890, to the aggregate amount of	600,000	
Five Per Cent. Bonds of the South Ferry Railroad Company, due April 1, 1919, secured by mortgage to the Central Trust Company of New York, as Trustee, dated April 1, 1889, to the aggregate amount of	350,000	
	$28,950,000	

B.

BONDS SECURED BY LIEN UPON PROPERTIES LEASED TO THE RAILWAY COMPANY AND WHICH BONDS THE RAILWAY COMPANY DESIRES TO ACQUIRE.

First Mortgage Five Per Cent. Bonds of The Broadway and Seventh Avenue Railroad Company, due June 1, 1904, secured by mortgage to Robert Buck, Trustee, dated June 1, 1883, to the aggregate amount of	$1,500,000
Second Mortgage Five Per Cent. Bonds of The Broadway and Seventh Avenue Railroad Company, due July 1, 1914, secured by mortgage to William H. Hays, Trustee, dated July 1, 1884, to the aggregate amount of	500,000
First Consolidated Mortgage Five Per Cent. Gold Bonds of The Broadway and Seventh Avenue Railroad Company, due December 1, 1943, secured by mortgage to The New York Guaranty and Indemnity Company, Trustee, dated December 22, 1893, to secure 12,500 bonds of $1,000 each, of which bonds numbered 1 to 7650 inclusive are outstanding, amounting in the aggregate to	$7,650,000
and bonds numbered from 7651 to 12,500 inclusive are held by the Trustee under said mortgage for the purpose of acquiring in whole or in part the above mentioned First and Second Mortgage Bonds of The Broadway and Seventh Avenue Railroad Company, the above mentioned First and Second Mortgage Bonds of the Broadway Surface Railroad Company, and the above mentioned Five Per Cent. Bonds of the South Ferry Railroad Company, all of which amount in the aggregate to $4,850,000.	
General Consolidated Mortgage Five Per Cent. Bonds of The Second Avenue Railroad Company, in the City of New York, due November 1, 1909, secured by mortgage to the Central Trust Company of New York, as Trustee, dated January 1, 1885, to the aggregate amount of	1,600,000
First Consolidated Mortgage Five Per Cent. Gold Bonds of The Second Avenue Railroad Company, in the City of New York, due February 1, 1948, secured by mortgage to the Guaranty Trust Company of New York, as Trustee, dated January 20, 1898, to secure bonds to the aggregate amount of $7,000,000, of which there are outstanding bonds to the aggregate amount of	5,184,000

and coupon bonds of the principal amount of $1,000 each numbered from 5185 to 7000 inclusive are held by the Trustee under said mortgage for the purpose of paying or acquiring in whole or in part the above mentioned General Consolidated Mortgage Bonds and certain Debenture Bonds of said Railroad Company hereinafter mentioned, which amount in the aggregate to $1,816,000.

Consolidated Mortgage Seven Per Cent. Bonds of the Central Park, North and East River Railroad Company, due December 1, 1902, secured by mortgage to The Farmers' Loan & Trust Company, as Trustee, dated December 1, 1872, to the aggregate amount of $1,200,000

Bonds of the Bleecker Street and Fulton Ferry Railroad Company, extended to January 1, 1950, at four per cent., secured by mortgage dated January 2, 1865, under which The State Trust Company or its successor is now substituted Trustee, to the aggregate amount of 700,000

First Mortgage Six Per Cent. Extended Bonds of the Twenty-third Street Railway Company, due January 1, 1909, secured by mortgage to Darius R. Mangam, as Trustee, dated May 1, 1873, to the aggregate amount of 250,000

First Mortgage Six Per Cent. Extended Bonds of the Forty-second Street and Grand Street Ferry Railroad Company, due January 1, 1909, secured by mortgage under which Henry A. Robinson is now substituted Trustee, dated April 1, 1873, to the aggregate amount of..... $236,000

$18,830,000

C.

BONDS SECURED BY LIEN UPON PROPERTIES FORMING PART OF, OR USED IN CONNECTION WITH, THE RAILWAY COMPANY'S SYSTEM, AND WHICH BONDS THE RAILWAY COMPANY DESIRES TO ACQUIRE.

First Mortgage Five Per Cent. Gold Bonds of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad Company, due October 1, 1996, secured by mortgage to the Central Trust Company of New York, as Trustee, dated October 1, 1896, to the aggregate amount of $1,500,000

First Mortgage Five Per Cent. Gold Bonds of the Thirty-fourth Street Crosstown Railway Company, due April 1, 1996, secured by mortgage to the Central Trust Company of New York, as Trustee, dated April 1, 1896, to the aggregate amount of.....	1,000,000
First Mortgage Four Per Cent. Gold Bonds of the Fulton Street Railroad Company, due November 1, 1995, secured by mortgage to the Guaranty Trust Company of New York, as Trustee, dated November 1, 1895, to the aggregate amount of.....	500,000
First Mortgage Six Per Cent. Bonds of The Central Crosstown Railroad Company of New York, due November 1, 1922, secured by mortgage to The American Loan and Trust Company, Trustee, dated November 1, 1882, to the aggregate amount of.....	250,000
Four Per Cent. Extended Bonds of The Christopher and Tenth Street Railroad Company, due October 1, 1918, secured by mortgage, under which the Guaranty Trust Company of New York is now substituted Trustee, dated October 1, 1878, to the aggregate amount of.....	210,000
	$3,460,000

D.

BONDS SECURED BY LIEN UPON REAL ESTATE OWNED BY THE RAILWAY COMPANY.

Bond of Oren Root, jr., due September 1, 1902, bearing interest at four per cent. per annum, guaranteed by the Railway Company, and secured by mortgage to The Mutual Life Insurance Company of New York, dated September 20, 1899, for the principal amount of.....	$950,000
Bond of John D. Crimmins, due February 20, 1894, bearing interest at five per cent. per annum, secured by mortgage to The Mutual Life Insurance Company of New York, dated February 20, 1893, for the principal amount of.....	150,000
Bond of John D. Crimmins, due August 1, 1897, bearing interest at five per cent per annum, secured by mortgage to The Eighth Avenue Railroad Company, July 19, 1899, upon which there remains due the principal amount of.....	$200,000
	$1,300,000

E.

BONDS NOT SECURED BY MORTGAGE.

Five Per Cent. Bonds of The Metropolitan Crosstown Railway Company, due May 1, 1901, to the aggregate amount of	$300,000
Debenture Bonds of The Second Avenue Railroad Company, in the City of New York, due January 12, 1909, to the aggregate amount of	216,000
Five Per Cent. Debenture Bonds of the Twenty-third Street Railway Company, due January 1, 1906, to the aggregate amount of	150,000
	$666,000
Total	$48,196,000

Provision for exchange of bonds hereunder for outstanding old bonds and collateral bonds.

Whenever the Railway Company shall tender, or cause to be tendered, to the Trustee, any of the said outstanding old bonds or collateral bonds (whether before or after the payment or maturity of outstanding old bonds or the maturity of collateral bonds), with all the unmatured coupons thereunto appertaining, the Trustee shall, in exchange therefor, certify and deliver to the Railway Company, or upon its order, refunding bonds hereunder of a face amount equal to the face amount of the bonds so received by the Trustee; but no refunding bonds shall be certified or delivered by the Trustee hereunder in exchange for the above-mentioned First and Second Mortgage Bonds of The Broadway and Seventh Avenue Railroad Company, or for the above mentioned First and Second Mortgage Bonds of The Broadway Surface Railroad Company, or for the above mentioned Five Per Cent. Bonds of the South Ferry Railroad Company, unless and until the Trustee hereunder shall have received proof satisfactory to it that no First Consolidated Mortgage Five Per Cent Gold Bonds of The Broadway and Seventh Avenue Railroad Company have been issued for the purpose of paying or acquiring the bonds so tendered; and no refunding

bonds shall be certified or delivered by the Trustee hereunder in exchange for the above mentioned General Consolidated Mortgage Bonds or for the Debenture Bonds of The Second Avenue Railroad Company, in the City of New York, unless and until the Trustee shall have received proof satisfactory to it that no First Consolidated Mortgage Five Per Cent. Gold Bonds of said Second Avenue Railroad Company have been issued for the purpose of paying or acquiring the bonds so tendered.

If any of said First Consolidated Mortgage Five Per Cent. Gold Bonds of the Broadway and Seventh Avenue Railroad Company shall at any time hereafter be issued in exchange for, or sold to pay or purchase, any of said First and Second Mortgage Bonds of The Broadway and Seventh Avenue Railroad Company, said First and Second Mortgage Bonds of The Broadway Surface Railroad Company, or said Five Per Cent. Bonds of the South Ferry Railroad Company, and the Railway Company shall tender or cause to be tendered to the Trustee said First Consolidated Mortgage Five Per Cent. Gold Bonds so issued, the Trustee shall, in exchange therefor, certify and deliver to the Railway Company or upon its order, refunding bonds hereunder of a face amount equal to the face amount of the bonds so received by the Trustee, upon receiving proof satisfactory to it that the underlying bonds, in exchange for or to pay or purchase which, said consolidated bonds are claimed to have been issued or sold, have been stamped and are held in accordance with the terms of said First Consolidated Mortgage of the Broadway and Seventh Avenue Railroad Company, dated December 22, 1893; and if any of said First Consolidated Mortgage Five Per Cent. Gold Bonds of said Second Avenue Railroad Company shall at any time hereafter be issued in exchange for, or sold to pay or purchase, any of said General Consolidated Mortgage Bonds or Debenture Bonds of said Second Avenue Railroad Company, and the Railway Company shall tender or

cause to be tendered to the Trustee said First Consolidated Mortgage Five Per Cent. Gold Bonds so issued, the Trustee, in exchange therefor, shall certify and deliver to the Railway Company, or upon its order, refunding bonds hereunder of a face amount equal to the face amount of the bonds so received by the Trustee, upon receiving proof satisfactory to it that the underlying bonds in exchange for, or to pay or purchase which, said consolidated bonds are claimed to have been issued or sold, have been stamped and are held in accordance with the terms of said First Consolidated Mortgage of said Second Avenue Railroad Company, dated January 20, 1898.

Provision for selling bonds in order to purchase outstanding old bonds and collateral bonds.

At any time or times on or after the maturity of any of the outstanding old bonds, or collateral bonds, or within twelve months before such maturity, the Railway Company may sell refunding bonds in order to provide the means to purchase or pay such outstanding old bonds, or to purchase such collateral bonds, as shall not theretofore have been delivered to the Trustee and held by it under this indenture, and which have matured, or are about to mature within twelve months, and the Trustee shall certify and deliver to the Railway Company, or upon its order, refunding bonds hereunder to a face amount equal to the face amount of such outstanding old bonds or collateral bonds which have matured, or are about to mature within twelve months; provided that the par value of the refunding bonds so certified and delivered shall simultaneously be deposited in cash with the Trustee in exchange therefor. Out of the cash so received by the Trustee, it shall, on demand of the Railway Company and upon delivery to the Trustee of the outstanding old bonds or collateral bonds so paid or purchased by the Railway Company, pay to the Railway Company a sum equal to the par amount of the bonds so paid or purchased.

Cancellation of mortgages securing outstanding old bonds when old bonds have been deposited.

Whenever all outstanding old bonds of any class shall have been surrendered in exchange for refunding bonds or shall have been paid, except any lost or

destroyed bonds for which satisfactory indemnity may have been given, the Trustee shall, at the request of the Railway Company, cancel all outstanding old bonds of such class, and shall cause the mortgage or trust deed securing the same to be canceled or discharged of record or the mortgaged premises and property embraced therein to be released from such mortgage or trust deed. The Trustee shall, at the request of the Railway Company, also cancel any outstanding old bonds held by the Trustee, although not constituting the entire outstanding issue of such bonds.

Deposited bonds to be stamped and held as security.

All outstanding old bonds and collateral bonds, which shall be acquired by the Trustee hereunder, shall be stamped with the words: "Not negotiable. Held in trust for the purposes declared in the Refunding Mortgage of the Metropolitan Street Railway Company, dated March 21, 1902," and (either with or without conversion into registered bonds at the option of the Trustee), shall be held by the Trustee as purchaser, as additional security for the payment of the bonds hereby secured. If, at the time of the maturity of any such outstanding old bonds, the holder thereof shall decline to sell and to deliver the same at face value and accrued interest, but shall require the payment thereof, then, upon payment and deposit thereof, the Trustee shall certify and deliver to the Railway Company, or upon its order, the same amount, face value, of refunding bonds hereby secured as though such matured bonds had been purchased by the Railway Company, and by it deposited with the Trustee hereunder; and by virtue of such payment of such bonds and the issue of such refunding bonds hereunder, the Trustee shall be forthwith subrogated to and vested with all the rights and liens of the holders of the bonds so paid.

Registry of deposited bonds.

The Railway Company shall provide and maintain books wherein it shall register as the property of the Trustee all bonds received by the Trustee hereunder,

and except as herein expressly provided, no such bond shall be canceled by the Trustee.

Collection of interest upon outstanding old bonds.

Neither the principal nor the interest of any outstanding old bond held by the Trustee hereunder shall be collected or required to be paid, unless or until proceedings shall have been instituted to foreclose the mortgage securing such bond, either by entry or by sale; but then and thereupon all the bonds of that issue then so held by the Trustee, and all interest thereon maturing on or subsequent to the date upon which the default was made for which such proceeding shall have been instituted, shall be entitled to payment, and payment thereof shall be enforced ratably and equally with all other bonds of such issue not held by the Trustee.

Certification of bonds upon satisfaction of underlying mortgages.

Upon the satisfaction and discharge of the record of the mortgage or mortgages securing any issue of outstanding old bonds, the Trustee shall, when and as called for by the Railway Company, certify and deliver to it an amount of refunding bonds equal to the aggregate amount hereinbefore specified of bonds secured by the mortgage or mortgages so satisfied and discharged, except so far as such refunding bonds shall theretofore have been issued against deposit of such outstanding old bonds with the Trustee, as hereinbefore provided, and except so far as any collateral bonds shall theretofore have been issued to pay or acquire bonds secured by the mortgage or mortgages so satisfied and discharged.

Certification of bonds upon provision for purchase or payment of underlying bonds.

Anything hereinbefore contained to the contrary notwithstanding, upon the Trustee in its unrestricted discretion being satisfied that sufficient provision has been made for the purchase or payment of each and every outstanding old bond of any issue hereinbefore described in Schedules A, D and E of this Article, the Trustee, without any other or further condition precedent, shall certify and deliver upon the order of the Railway Company an amount of refunding bonds equal to the amount of the outstanding old bonds of such issue as extended in Schedules A, D and E of this

Article, except so far as such extended amount may then have been reduced by the issuance of refunding bonds against deposit of such outstanding old bonds with the Trustee, as hereinbefore provided, and except so far as such extended amount may then have been reduced by the issuance of collateral bonds issued to pay or acquire outstanding old bonds of such issue; and from time to time the Railway Company shall take all practicable means to procure, upon terms which it shall deem reasonable, the satisfaction and discharge of all the mortgages securing such outstanding old bonds.

Certification of bonds not needed for refunding purposes.

Any refunding bonds which shall no longer be required to be reserved for issue and delivery in exchange for or to take up at or before maturity the outstanding old bonds, or to acquire the collateral bonds, in accordance with the preceding provisions of this paragraph (2), may be certified and delivered to the Railway Company or upon its order, on filing with the Trustee, from time to time, a copy of a resolution of the board of directors of the Railway Company, certified under its corporate seal by its secretary, requesting such delivery.

The remaining $5,804,000 of bonds.

(3) The remaining $5,804,000 face value of the said bonds shall be certified and delivered for use, in the discretion of the Railway Company, in the purchase and refunding of the outstanding old bonds and the purchase of the collateral bonds to be acquired as aforesaid.

Certification of bonds for refunding purposes.

The bonds so reserved under this subdivision for refunding and purchasing purposes shall be certified and delivered to the Railway Company, or upon its order, on the filing with the Trustee, from time to time, a copy of a resolution of the board of directors of the Railway Company certified under its corporate seal by its secretary, or an assistant secretary, requesting such delivery and stating that the bonds so delivered, or their proceeds, will be used by the Railway Company only for the purposes of such refunding or purchasing.

Certification of bonds not needed for refunding purposes.

Any refunding bonds so reserved under this paragraph (3) which, after January 1, 1920, shall not have

been used for refunding or purchasing the aforesaid indebtedness or, in the judgment of the board of directors of the Railway Company, to be expressed by a resolution of said board, shall no longer be required to be reserved for use for such purposes, may be certified and delivered to the Railway Company or upon its order, on filing with the Trustee, from time to time, a copy of a resolution of the board of directors of the Railway Company, certified under its corporate seal by its secretary, or an assistant secretary, requesting such delivery.

Trustee's liability limited.

(4.) A certificate signed by the president or vice-president of the Railway Company and by its treasurer, as to any facts, matters or conclusions pertinent to the right to certify and deliver refunding bonds, as aforesaid, shall, as regards the Trustee, be conclusive evidence of such facts, matters and conclusions and be full authority for the action of the Trustee in accordance therewith.

Until default Trustee not to collect interest on bonds subject to this indenture.

ARTICLE THIRD.—Unless (1) default shall be made in the payment of interest on any bond hereby secured, and such default shall continue for the period of sixty days; or unless (2) default shall be made in the payment of the principal of any such bond; or unless (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Railway Company and any such last mentioned default shall be continued for the period of sixty days after notice thereof to the Railway Company from the Trustee or the holders of five per cent. or more in amount of the bonds hereby secured and at the time outstanding, and except during the continuance of any such default, the Trustee (except with the assent of the Railway Company, or except in case of the institution of proceedings to foreclose the mortgage securing any outstanding old bonds and with reference to such outstanding old bonds only) shall not collect or be entitled to collect the interest of any bonds subject to the lien of

this indenture, and the Railway Company shall be entitled to receive any interest paid in respect of all such bonds. From time to time, subject to the provisions of this Article, upon the request of the Railway Company, the Trustee shall deliver to it the coupons for interest payable upon all deposited bonds; and the Trustee shall at once pay over to the Railway Company any such interest which may be collected or received by it. The Trustee shall have power, at the request of the Railway Company, to extend the time of payment of any bonds subject hereto, and to consent to a reduction of the rate of interest upon any such bonds, and also to exchange any such bonds for, or, in case of payment of such bonds, to invest the principal thereof in, at least an equal amount face value of other bonds of the same or another company, of a total issue not greater than that of the bonds so exchanged therefor, and secured by a mortgage upon the same line of railroad which shall not be subordinate in lien to any prior mortgage upon such line to which the mortgage securing said bonds so exchanged was not subordinate at the time of the payment or exchange thereof. The Trustee, in its unrestricted discretion, may accept the certificate of the president or a vice-president and another officer of the Railway Company as conclusive evidence of any of the facts, matters or conclusions upon which the power of the Trustee so to extend or exchange bonds or to consent to a reduction of interest or to reinvest the proceeds of bonds depends. Subject to such power of extension, exchange and investment the principal of any bonds collected and received by the Trustee shall be held and disposed of by it, in the same manner as hereinafter in Article Thirteenth of this indenture, provided as to any sums received by the Trustee pursuant to said Article.

In case of default of interest on collateral bonds Trustee to foreclose mortgage securing same.

If any default shall be made in the payment of the principal or interest of any of the collateral bonds at any time subject hereto, or of other bonds secured by the same mortgage as such collateral bonds held by the Trustee, then, in such case, the Trustee, upon the

written request of the Railway Company, and upon being indemnified as hereinafter provided, may cause proper proceedings to be instituted and prosecuted in some court of competent jurisdiction to foreclose the mortgage or mortgages by which such bonds are secured; but in any case where not less than eighty-five per cent. in amount of the principal of all the bonds secured by any mortgage are pledged hereunder, proceedings to foreclose such mortgage shall be taken only under such conditions as in the judgment of the Trustee will enable it either to obtain par and interest for the bonds secured by such mortgage held by it, or else to acquire the property covered by such mortgage and to subject such property, or securities representing such property, to the lien hereof, as hereinafter provided. The Trustee, however, shall not be liable for any error of judgment in respect of such proceedings or their outcome, or for anything omitted or done by its attorneys or counsel in such proceedings, provided such attorneys or counsel shall have been selected with reasonable care. In case the Railway Company shall be in default in the payment of the principal or interest of any of the bonds hereby secured, and such default shall have continued for a period of three months; or in case a receiver of the mortgaged premises shall have been appointed; or in case the Trustee shall have entered, or shall have elected to enter, into possession of the mortgaged premises under the power hereinafter conferred, or by the voluntary action of the Railway Company, then the Trustee, in its discretion, may institute such proceedings without such written request.

Convenant to pay principal and interest.

ARTICLE FOURTH.—The Railway Company agrees and convenants that it will duly and punctually pay or cause to be paid to every holder of any bond issued hereunder and secured hereby the principal and interest accruing thereon, all in gold coin of the United States of America of or equal to the present standard of weight and fineness, at the dates and place and in the manner mentioned in said bond or in the

coupons thereto appertaining, according to the true intent and meaning thereof, without deduction from either principal or interest for any tax or taxes which the Railway Company may be required to pay thereon or retain therefrom under any present or future law of the United States of America, or of any state, county or municipality therein. The interest on coupon bonds shall be payable only on presentation and surrender of the respective coupons annexed to said coupon bonds as such coupons respectively mature; and when and as paid, all coupons shall forthwith be canceled by the Railway Company.

Covenant not to extend interest.

In order to prevent any accumulation after maturity of coupons or claims for interest upon registered bonds, the Railway Company agrees and covenants that it will not, directly or indirectly, extend or assent to the extension of the time for payment of any coupon or claim for interest upon any bonds secured hereby; and that it will not, directly or indirectly, be a party to or approve any such arrangement by purchasing or funding said coupons or claims for interest on registered bonds or in any other manner. In case the time for payment of any such coupon or claim for interest shall be so extended, whether or not such extension be by or with the consent of the Railway Company, such coupon or claim for interest shall not be entitled, in case of default hereunder, to the benefit or security of this indenture, except subject to the prior payment in full of the principal of all bonds issued hereunder then outstanding, and of all matured coupons and claims for interest on such bonds, the payment of which has not been so extended.

Covenant to discharge taxes, etc.

The Railway Company agrees and covenants that it will from time to time duly pay and discharge all taxes, assessments and governmental charges lawfully imposed upon the railroads, franchises, property and premises hereby mortgaged and pledged, or upon any part thereof, or upon the income or profits thereof, the lien of which might or could be held prior or superior to the lien of this indenture, so that the priority of this

indenture shall be fully preserved in respect of all such properties; and that it will also pay and discharge all taxes, assessments and governmental charges lawfully imposed upon the estate of the Trustee, or upon the interest therein of the holder of any bond or bonds or coupons hereby secured; provided, however, that the Railway Company shall not be required to pay any such taxes, assessments or governmental charges so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof.

Covenant to pay principal and interest of outstanding old bonds.

The Railway Company agrees and covenants that it will well and truly pay and discharge the principal and interest of all and singular the said outstanding old bonds hereinbefore in subdivision A of paragraph (2) of Article Second hereof enumerated, at or before their maturity by the terms thereof or of any extension of the time of payment thereof.

Covenant as to leases.

The Railway Company agrees and covenants that it will from time to time punctually observe and perform all of the obligations and pay and discharge all amounts payable under or by virtue of any lease hereby mortgaged, so that the interest of the Railway Company in any such leasehold estate may be at all times preserved unimpaired as security for the bonds issued hereunder; provided, however, that nothing contained in this Article shall require the Railway Company to make any such payments or to observe any such obligations so long as it shall, in good faith and by appropriate legal proceedings, contest its liability therefor.

Covenant to maintain office in New York.

The Railway Company agrees and covenants that it will, at all times until the payment of the principal of the bonds secured by this indenture, either keep an office or agency in the city of New York where bonds and coupons may be presented for payment and where notices or demands in respect of said bonds and coupons may be served, or designate, by written notice to the Trustee and by advertisement, a bank or trust company in said city for such purposes. In default of any such office or agency or any such designation, pres-

entation and demand may be made and notices served at the office of the Morton Trust Company in the city of New York.

Covenant to keep property in repair.

The Railway Company agrees and covenants at all times to maintain, preserve and keep the mortgaged railroad and property and every part thereof, with the rolling stock, fixtures and appurtenances and every part and parcel thereof, whether owned, controlled or leased by it, in thorough repair, working order and condition, and supplied with motive power, rolling stock and equipment, and that it will from time to time make all needful and proper repairs, renewals, replacements, additions, betterments and improvements, so that the traffic and business thereof and of every part thereof shall at all times be conducted with safety and expedition.

Covenant to keep this indenture a first lien subject to existing liens.

The Railway Company agrees and covenants that this indenture is and always will be kept a first lien upon all the premises and property described in the granting clauses hereof, now owned by the Railway Company and upon all property hereafter acquired by it in connection with such premises and property, and upon all renewals and replacements of such property and all additions, switches, side-tracks, betterments and improvements thereto, subject only to existing liens, and that it shall become a first lien upon the payment of the outstanding old bonds, as herein provided; that it will not create or suffer to be created or to accrue or to exist any lien or charge having priority to or preference over the lien of this indenture upon the mortgaged premises and property, or any part thereof, or upon the income thereof and that it will, within three months after the same shall accrue, pay or cause to be discharged or paid, or will make adequate provision for the satisfaction or discharge of every lawful claim and demand for labor, material, supplies or other objects which, if unpaid, might by law be given precedence to this indenture as a lien or charge upon the mortgaged premises or any part thereof or upon the income thereof; provided, how-

Covenant to discharge claims given priority in law, etc.

ever, that it shall not be required to pay any such claims or demands so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof.

Covenant to preserve franchises, etc.

The Railway Company agrees and covenants that it will maintain and preserve all franchises, rights, easements, powers and privileges required or necessary to preserve the continuity of the main lines of railroad subject to this indenture and that it will maintain its corporate existence for all the purposes of this indenture; provided, however, that the Railway Company shall not be required hereunder to maintain or preserve any franchise, right, easement, power or privilege which, in its opinion, it is inadvisable to maintain or preserve, so long as the continuity of the main lines of railroad subject hereto is preserved.

Covenant to deliver pledged shares of stock

The Railway Company agrees and covenants that the shares of stock hereby mortgaged and pledged, excepting shares necessary to qualify directors, shall, whenever and as soon as the lien of the said mortgage dated February 1, 1897, from the Railway Company to the Guaranty Trust Company of New York may be discharged, be duly endorsed in blank and forthwith delivered to the Trustee to be held by it, subject in all respects to the lien and operation of these presents, as security hereunder for the payment of the principal and interest of the bonds intended to be secured hereby. The Trustee may cause all shares of stock at any time mortgaged and pledged hereunder to be transferred into its name as Trustee, at the expense of the Railway Company, but the Trustee, in its discretion, in lieu of transferring such shares into its own name, may hold the certificates therefor, endorsed in blank by the registered holder or holders thereof, and may make such other transfers and arrangements as may be required from time to time for the purpose of carrying out the objects of this indenture.

Voting power on pledged shares.

The power to vote upon or consent in respect of any shares of stock that may be deposited, mortgaged and pledged hereunder shall be exercised by the Railway

Company only as herein provided. So long as there shall be no default in the payment of the principal or interest of the bonds hereby secured, the Railway Company shall have power to vote or consent in respect of said shares of stock, personally or by proxy, for any purpose whatsoever, except as herein otherwise provided, as may be directed by resolution of the board of directors of the Railway Company ; and in case any of the said shares shall at any time hereafter be transferred by or on behalf of the Trustee into its own name or unto any person or corporation other than the Railway Company, then the Trustee shall make, sign, seal, execute or procure and deliver such proper proxies or powers of attorney as shall empower and permit the Railway Company, or its substitute or substitutes or designated representative or representatives, at all times (save in case of such default as aforesaid) to vote upon and consent in respect of the said shares of stock. In the event of such default, and during the continuance of the same, such voting power may be exercised by means of proper proxies, which shall be given or procured by the Trustee and delivered to such person or persons as may be designated or appointed by the holders of a majority in interest of the bonds hereby secured and then outstanding, by an instrument or concurrent instruments in writing duly signed by such holders or their authorized agents, as hereinafter provided ; provided, however, that until the holders of a majority in interest of the bonds hereby secured and then outstanding shall make such designation or appointment, the Trustee may exercise the said voting power in its discretion. The Trustee shall be under no obligation to see that said shares of stock are voted in accordance with the covenants of the Railway Company herein contained, whether such shares are voted by the Railway Company or under proxes issued or procured by the Trustee.

Covenant not to sell pledged shares, increase capital stock or create additional indebtedness, etc.

The Railway Company agrees and covenants that it will not sell any of the shares of stock deposited, mortgaged and pledged hereunder ; nor will it, except subject to the prior lien of this mortgage, pledge or

agree to pledge or hypothecate the same, nor by any voluntary act or omission part with the ownership of such stock or any part thereof or with its equity of redemption therein. The certificates for said stock may be deposited hereunder in the name or names of individuals or corporations other than the Railway Company, provided the same be endorsed in blank; but in such case the Railway Company agrees and covenants that it will procure proper proxies securing to it the voting power on such stock when necessary for carrying out the purposes of this indenture and so long as it shall be entitled to vote the same pursuant to the terms hereof, or, if such proxies cannot be secured, the Railway Company shall cause said stock to be transferred into its own name at its own cost and expense of transfer. The certificates for any stock so transferred into the name of the Railway Company shall be endorsed in blank by it, and deposited with the Trustee. The Railway Company further agrees and covenants that as holder of such stock, or of proxies to vote the same, it will not by affirmative vote or by abstaining from voting or in any other manner, directly or indirectly, sanction or permit any increase of the capital stock of any corporations, the shares of which are mortgaged or pledged hereunder, or, except as to issues of bonds, some or all of which are to be exchanged for bonds deposited and pledged hereunder or purchased by the Trustee with the proceeds of such deposited bonds pursuant to the power given to the Trustee by Article Third hereof, sanction or permit, the creation of any indebtedness of any of said corporations for money borrowed, or the the issue of any bonds by any of said corporations or the creation of any mortgage or other lien upon any of their railroads, properties, rights, privileges or franchises, beyond or in addition to the bonds, debts, or obligations of said corporations, respectively, authorized to be issued under any mortgage or deed of trust existing at the date hereof.

Dividends on pledged shares.

So long as there shall be no default in the payment of the principal or interest of the bonds hereby secured, the Railway Company shall be entitled to collect and receive all dividends and increase payable upon any shares of stock deposited, mortgaged and pledged hereunder; and any such dividends or increase, which may be collected by the Trustee, shall, as the same are collected by it, be paid over to the Railway Company or upon its rder for its own use. In the event of any such default, and during the continuance of the same, all such dividends and increase shall be collected by the Trustee and may be by it applied to the payment of the interest upon the bonds hereby secured as it accrues, or to make or reimburse any expenditure of the Trustee authorized under this indenture.

Stock dividends on pledged shares.

Any and all stock dividends which may be declared and which may become payable upon any such shares of stock deposited with and held by the Trustee hereunder, shall be transferred and delivered to the Trustee, and shall be by it held as further security for the benefit of the holders of the bonds hereby secured, with the same effect and subject to all the conditions and provisions hereof as if originally pledged hereunder. Any and all additional shares of stock so received and pledged shall be fully paid and non-assessable.

Pledge of shares not to prevent consolidation, merger or sale.

The assignment, transfer and pledge hereunder of any such shares of stock shall not prevent the consolidation or merger with the Railway Company or with one another of any corporations the shares of which are so assigned, transferred or pledged, or the sale or transfer by any such corporation of its railroads, properties, rights, privileges and franchises to the Railway Company or to another of said corporations; but such consolidation, merger or transfer may be made under any existing or future law, anything in this indenture contained to the contrary notwithstanding; provided that such consolidation, merger or transfer shall be made only upon such terms and at such times and in

such manner as not to impair the lien of this indenture or the security for the bonds issued hereunder.

A certificate signed by the president or one of the vice-presidents of the Railway Company may be received by the Trustee as conclusive evidence of any of the facts, matters or conclusions mentioned or referred to in this Article, and shall be full warrant, direction or justification to the Trustee for its action on the faith thereof in respect of any of the provisions of this Article.

Trustee's right of entry in case of default.

ARTICLE FIFTH.—In case (1) default shall be made in the payment of any interest on any bond hereby secured and any such default shall continue for a period of three months; or in case (2) default shall be made in the payment of the principal of any such bond; or in case (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Railway Company, and any such last-mentioned default shall continue for a period of sixty days after written notice thereof to the Railway Company from the Trustee or from the holders of five per cent. or more in amount of the bonds hereby secured and at the time outstanding; then, and in each and every such case, the Trustee, either personally or by its agents or attorneys, may, either upon its own motion or upon the written request of the holders of twenty-five per cent. in amount of the bonds hereby secured then outstanding, forthwith enter into and upon all or any part of the railroads, rolling stock, property, lands, leaseholds, rights, interests, franchises and premises, and the income thereof, hereby conveyed or intended so to be, and each and every part thereof, and may exclude the Railway Company and its agents and servants wholly therefrom; and, having and holding the same, may use, operate, manage and control said railroads and other premises, regulate the tolls for the transportation of passengers and freight thereon, and conduct the business thereof, either personally or by superintendents, managers, re-

Right to manage and operate.

ceivers, agents, servants or attorneys, to the best advantage of the holders of the bonds hereby secured, to the fullest extent authorized by law. Upon every such entry the Trustee may from time to time at the expense of the trust estate, either by purchase, repair or construction, maintain and restore and insure or keep insured, in the same manner and to the same extent as is usual with street railroad companies, the rolling stock, tools, machinery and other property, buildings, bridges and other structures erected or provided for use in connection with said railroads and other premises, or any part thereof, and of which it shall become possessed as aforesaid; and likewise may from time to time, at the expense of the trust estate, make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments and improvements thereto and thereon as to it may seem judicious. The Trustee, in case of such entry, shall have the right to manage the mortgaged railroads and premises and to carry on the business and to exercise all the rights and powers of the Railway Company, either in the name of the Railway Company or otherwise, as the Trustee shall deem best. It shall be entitled to collect and receive all tolls, earnings, incomes, rents, issues and profits of the mortgaged railroads and premises and every part thereof. After deducting the expenses of operating said railroads and other premises, and of conducting the business thereof and of all repairs, maintenance, renewals, replacements, alterations, additions, betterments and improvements, and all payments which may be made for taxes, assessments, insurance and prior or other proper charges upon the said railroads, premises or property or any part thereof, as well as just and reasonable compensation for its own services and for the services of all counsel, agents and employees by it properly engaged and employed, it shall apply the moneys arising as aforesaid as follows:

Application of income by Trustee in possession.

First.—In case the principal of the bonds hereby secured shall not have become due, to the payment

— before principal due.

of the interest in default in the order of the maturity of the installments of such interest, with interest thereon, at the rate of interest which the refunding bonds shall respectively carry, such payments to be made ratably to the persons entitled thereto without any discrimination or preference;

Second.—In case the principal of the bonds hereby secured shall have become due, by declaration or otherwise, first to the payment of the accrued interest (with interest at the rate aforesaid on the overdue installments thereof) in the order of maturity of the installments, and next, if any surplus remain, towards the payment of the principal of all bonds hereby secured; such payments in every instance to be made ratably to the persons entitled thereto, without any discrimination or preference. — after principal due.

Upon the payment in full of whatever may be due for principal and interest, or payable for other purposes, the premises shall be returned to the Railway Company, its successors or assigns or to whosoever may be lawfully entitled thereto. Return of property.

In case the Railway Company shall make default in any of the respects mentioned in this Article, and at any time during the continuance of such default there shall be any existing judgment against the Railway Company unsatisfied and unsecured by bond on appeal, or in case, in any judicial proceeding by any party other than the Trustee, a receiver shall be appointed of the Railway Company, or a judgment or order entered for the sequestration of its property, the Trustee shall be entitled forthwith to exercise the right of entry herein conferred, without waiting said prescribed default period, and also any and all other rights and powers herein conferred and provided to be exercised by the Trustee upon the occurrence and continuance of default as hereinbefore provided; and, as matter of right, the Trustee shall thereupon be entitled to the appointment of a receiver of the railroads, property and premises hereby mortgaged and pledged and of the tolls, earnings, income, rents, issues and profits Trustee's right to proceed in certain cases before expiration of default period, etc.

thereof, with such powers as the court making such appointment shall confer.

Trustee's right to declare principal due in case of default.

ARTICLE SIXTH.—In case default shall be made in the payment of any interest on any bond hereby secured, and any such default shall continue for a period of three months, the Trustee may, and upon the written request of the holders of a majority in amount of the bonds hereby secured then outstanding, shall, by notice in writing delivered to the Railway Company, declare the principal of all bonds hereby secured then outstanding to be due and payable immediately; and, upon any such declaration, the same shall become and be immediately due and payable, anything in this indenture or in said bonds contained to the contrary notwithstanding. This provision is, however, subject to the condition that if at any time after the principal of said bonds shall have been so declared due and payable all arears of interest upon such bonds (with interest on the overdue installments of interest at the rate which the refunding bonds shall respectively carry) and the expenses of the Trustee shall be paid by the Railway Company or be collected out of the mortgaged premises before any sale of the mortgaged premises shall have been made, then and in every such case the holders of a majority in amount of the bonds hereby secured then outstanding, by written notice to the Railway Company and to the Trustee, may waive such default and its consequences, and obtain from the Trustee a rescission of such declaration of the maturity of the principal; but no such waiver shall extend to or affect any subsequent default, or impair any right consequent thereon.

Waiver of default.

Trustee's right to sell in case of default.

ARTICLE SEVENTH.—In case (1) default shall be made in the payment of any interest on any bond hereby secured, and any such default shall continue for a period of three months; or in case (2) default shall be made in the payment of the principal of any such bond; or in case (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by

the Railway Company, and any such last mentioned default shall continue for a period of three months after written notice thereof from the Trustee or from the holders of five per cent. or more in amount of the outstanding bonds hereby secured; then, and in each and every such case, the Trustee shall, in its discretion, be forthwith entitled, with or without entry, either personally or by its agent or attorney, to sell to the highest and best bidder in one lot and as an entirety all and singular the mortgaged railroads and premises, leases, rights, franchises and interests, and shares of stock and bonds, and all right, title and interest, claim and demand therein and thereto, and right of redemption thereof. Such sale shall be at public auction in the City of New York, and at such time and upon such terms as the Trustee may fix, but this power of sale, as well as all other powers granted or conferred by this indenture, shall be exercised only so far as may be authorized by law. In case such power of sale be so exercised, the Railway Company shall join in any deed of conveyance or other writing evidencing such sale.

Trustee's right to institute legal proceedings in case of default.

ARTICLE EIGHTH.—In case (1) default shall be made in the payment of any interest on any bond hereby secured or in the payment of the principal of any such bond, or in case (2) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or performed by the Railway Company, and any such last-mentioned default shall continue for a period of sixty days after written notice thereof to the Railway Company from the Trustee or from the holders of five per cent. or more in amount of the outstanding bonds hereby secured, then, and in each and every such case, the Trustee may forthwith proceed to protect and enforce its rights and the rights of bondholders under this indenture by a suit or suits in equity or at law, either for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure of

this indenture for any default, or for the collection of interest or of principal and interest, or both, or for the enforcement of any other appropriate legal or equitable remedy, as the Trustee shall deem most effectual in support of any of its rights or duties hereunder.

Judicial proceedings and appointment of receiver.

ARTICLE NINTH.—Upon filing a bill in equity or upon other commencement of judicial proceedings by the Trustee to enforce any right under this indenture, this Trustee shall be entitled to exercise the right of entry herein conferred and also any and all rights and powers herein conferred and provided to be exercised by the Trustee upon the occurrence and continuance of any default as hereinbefore provided; and, as matter of right, the Trustee shall be entitled to the appointment of a receiver of the railroads, property and premises hereby mortgaged and pledged, and of the tolls, earnings, revenue, rents, issues, profits and other income thereof, with such powers as the court or courts making such appointment shall confer.

Remedies cumulative.

No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other remedy, but every remedy herein provided shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, or by statute; and every power and remedy given by this indenture to the Trustee or to the bondholders may be exercised from time to time and as often as may be deemed expedient.

Trustee's delay or omission not to impair rights hereunder.

No delay or omission of the Trustee or of any holder of bonds hereby secured to exercise any right or power arising from any default shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein. In case the Trustee shall have proceeded to enforce any right under this indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned because of waiver or for any other reason, or shall have been determined adversely to the Trustee, then, and in every such case, the Railway Company and the Trustee shall severally and respectively be restored to their former

position and rights hereunder in respect of the mortgaged premises, and all rights, remedies and powers of the Trustee shall continue as though no such proceedings had been taken.

In case of sale, property to be sold in one parcel, unless otherwise requested by holders of majority of bonds.

ARTICLE TENTH.—In the event of any sale under or by virtue of the power of sale herein contained or pursuant to judicial proceedings, the whole of the property and premises hereby mortgaged may be sold in one parcel and as an entirety, including all the rights, titles, estates, railroads, leaseholds, equipment, franchises, contracts, shares of stock, bonds and other real and personal property of every name and nature, unless such sale as an entirety be impracticable by reason of some statute or other cause, or unless the holders of a majority in amount of the bonds hereby secured then outstanding shall in writing request the Trustee to cause said property and premises to be sold in parcels, in which case the sale shall be made in such parcels as may be specified in such request; and this provision shall bind the parties hereto and each and every of the holders of the bonds and coupons hereby secured or intended so to be. Notice of any such sale shall state the time when and the place where the same is to be made, and shall contain a brief general description of the property to be sold, and shall be published once in each week for four successive weeks prior to such sale in two daily newspapers published in the City of New York, and such notice shall also comply with any requirement of statute or rule or order of court. The Trustee may adjourn any such sale or cause the same to be adjourned from time to time by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, without further notice or publication, such sale may be made at the time and place to which the same shall be so adjourned. In case of such sale of the mortgaged property and premises, the whole of the principal sum of the bonds hereby secured, if not previously due, shall, at the option of the Trustee or of the holders of a majority of the

Notice of sale.

Principal to become due in case of sale.

bonds hereby secured then outstanding, become immediately due and payable, anything in said bonds or in this indenture contained to the contrary notwithstanding.

Conveyance to purchaser at sale.

Upon the completion of any sale or sales made by the Trustee hereunder, the Trustee shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed or deeds of conveyance, sale and transfer of its right, title and interest in and to the property and franchises sold, or shall execute and deliver, in conjunction with the deed or deeds of the court officer conducting such sale, a proper release of such property and franchises. The Trustee and its successor or successors are hereby appointed the true and lawful attorney or attorneys irrevocable of the Railway Company, in its name and stead to make all necessary deeds of conveyance, sale and transfer of such property and franchises, and for that purpose the Trustee may execute all necessary acts of conveyance, assignment and transfer, and may substitute one or more persons or corporations with like power, the Railway Company hereby ratifying and confirming all that its said attorney or attorneys, or such substitute or substitutes, shall lawfully do by virtue hereof. Nevertheless, the Railway Company shall, if so requested by the Trustee, ratify and confirm such sale by executing and delivering to the Trustee or to such purchaser or purchasers all proper deeds, conveyances, transfers, assignments and releases, as may be designated in such request. Any such sale or sales made under or by virtue of this indenture, either under the power of sale hereby granted and conferred or under or by virtue of judicial proceedings, shall divest all right, title, interest, estate, claim and demand whatsoever, either at law or in equity, of the Railway Company of, in and to the property and premises sold, and shall be a perpetual bar both at law and in equity against the Railway Company, its successors and assigns, and against any and all persons claiming or to claim the property or premises sold or any part

thereof from, through or under the Railway Company, its successors or assigns.

ARTICLE ELEVENTH.—In case of any sale of the mortgaged premises and property, whether under the power of sale hereby granted or pursuant to judicial proceedings, the purchase money, proceeds or avails, together with any other sums which may then be held by the Trustee or be payable to it under any of the provisions of this indenture as part of the trust estate, shall be applied as follows : Application of proceeds of sale—

First.—To the payment of the costs, expenses, fees and other charges of such sale, and a reasonable compensation to the Trustee, its agents and attorneys, and to the payment of all expenses and liabilities incurred and advances or disbursements made by the Trustee, and to the payment of all taxes, assessments or liens prior to the lien of these presents, except any taxes, assessments or other superior liens subject to which such sale shall have been made. —first, to payment of expenses, etc. ;

Second.—Any surplus then remaining, to the payment of the whole amount owing or unpaid upon the principal and interest of the bonds hereby secured, with interest on the overdue installments of interest at the rate which the refunding bonds shall respectively carry ; and, in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the said bonds, then to the payment of such principal and interest ratably, according to the aggregate of such principal and the accrued and unpaid interest, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest. —second, to payment of principal and interest ;

Third.—Any surplus then remaining to the Railway Company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same. —third, surplus to Railway Company.

In case of sale of the mortgaged property and premises or any part thereof, either by the Trustee, or pursuant to judicial decree, the purchaser, for the purpose of making settlement or paymant for the prop- Purchaser may apply bonds, etc., on purchase price.

erty and premises purchased, shall be entitled to turn in or apply towards the payment of the purchase price any bonds issued hereunder and any matured and unpaid interest or coupons, and to be credited therefor to the extent of the value of such bonds, interest and coupons upon a distribution among the bondholders of the net proceeds of such sale, after making the deductions allowable under the terms hereof for the costs and expenses of the sale and otherwise. But such bonds, interest and coupons so applied in payment by the purchaser shall be deemed to be paid only to the extent so applied and credited. At any such sale, the Trustee or any bondholders or their agents may bid for and purchase such property and premises and may make payment therefor as aforesaid, and, upon compliance with the terms of sale, may hold, retain and dispose of such property and premises without further accountability. The receipt of the Trustee or of the court officer conducting such sale shall be a sufficient discharge for the purchase money to any purchaser of the property or premises, or any part thereof sold as aforesaid; and no such purchaser, or his representatives, grantees or assigns, after paying such purchase money and receiving such receipt shall be bound to see to the application of such purchase money upon or for any trust or purpose of this indenture, or be answerable in any manner whatsoever for any loss, misapplication or non-application of any such purchase money or any part thereof.

Receipt for purchase price.

Covenant to pay principal and interest to Trustee in case of default.

ARTICLE TWELFTH.—The Railway Company agrees and covenants that in case (1) default shall be made in the payment of any interest on any bonds hereby secured and such default shall continue for a period of three months; or in case (2) default shall be made in the payment of the principal of any such bonds when the same shall become payable, whether at the maturity of said bonds or by declaration as authorized by this indenture or by a sale of the mortgaged premises and property as hereinbefore provided; then, upon demand of the Trustee, it will pay

to the Trustee for the benefit of the holders of the bonds and coupons hereby secured and then outstanding, the whole amount due and payable on all such bonds and coupons for principal or interest or both, as the case may be, with interest upon the overdue principal and installments of interest; and, in case the Railway Company shall fail to pay the same forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled to recover judgment against the Railway Company for the whole amount so due and unpaid. The Trustee shall be entitled to recover judgment as aforesaid either before or after or during the pendency of any proceedings for the enforcement of the lien of this indenture upon the mortgaged premises and property, and its right to recover such judgment shall not be effected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this indenture, or by the foreclosure of the lien hereof; and, in case of a sale of the mortgaged premises and property and of the application of the proceeds of sale to the payment of the mortgage debt, either under any power hereby granted, or under judicial decree, the Trustee, in its own name and as trustee of an express trust, shall be entitled to receive and to enforce payment of any and all deficiency or amounts then remaining due and unpaid upon any or all of the bonds issued hereunder and then outstanding for the benefit of the holders thereof, and shall be entitled to recover judgment against the Railway Company for any portion of the mortgage debt remaining unpaid, with interest. No recovery of any judgment by the Trustee and no levy of any execution under any such judgment upon property subject to the lien of this indenture, or this indenture, or upon other property, shall, in any manner or to any extent, affect or impair the lien of the Trustee upon the mortgaged premises and property or any part thereof, or any rights, powers or remedies of the Trustee hereunder or any rights, powers or reme-

—suit therefor.

dies of the holders of the bonds hereby secured ; but such lien, rights, powers and remedies shall continue unaffected and unimpaired as before, except as against the purchaser of the mortgage premises and property at any sale made by the Trustee or under judicial decree. Any moneys thus collected by the Trustee under this Article shall be applied by the Trustee, first to the payment, at the option of the Trustee, of the costs and expenses of the proceedings resulting in the collection of such moneys, and to the payment of reasonable compensation to the Trustee for any and all services hereunder, and of the expenses paid or incurred by the Trustee in theretofore managing and maintaining the property and premises hereby conveyed ; and, second, toward payment of the amounts then due and unpaid upon such bonds or coupons respectively, without any preference or priority of any kind, but ratably according to the amounts due and payable upon such bonds and coupons respectively, at the date fixed by the Trustee for the distribution of such moneys.

—application of amount recovered.

ARTICLE THIRTEENTH.—Upon the written request of the Railway Company, approved by resolution of its board of directors, the Trustee may from time to time, so long as the Trustee shall not have taken possession of the mortgage premises and property, release from the lien and operation of this indenture any part of the mortgaged premises and property then subject thereto ; provided that no part of the lines of track or of the rights of way shall be released unless at the time of such release the same shall no longer be of use in the operation of any of the mortgaged lines of railroad ; and provided further that no part of the mortgage premises or property shall be released hereunder unless at the time of such release it shall no longer be necessary or expedient to retain the same for the operation, maintenance or use of such railroads or for use in the business of the Railway Company. No such release shall be made unless the property so to be released shall have been sold, or the sale

Release of property no longer of use to Railway Company.

or exchange of the same for other property shall have been contracted. The Trustee may, upon like request, and so long as there shall not be a default (of which the Trustee shall have received written notice) in the payment of any interest on, or principal of, any of the bonds hereby secured, release from the lien and operation of this indenture any of the shares of stock or bonds mortgaged and deposited and to be deposited hereunder upon the deposit with the Trustee of a sum in cash equal to the value of the shares of stock or bonds so released, as determined by an appraiser or appraisers appointed by the Railway Company and approved by the Trustee. The proceeds of any and all such sales of any part of the mortgaged premises and property, and all moneys received as compensation for any property subject to this indenture taken by exercise of the power of eminent domain, and any sums in cash so deposited upon the release of mortgaged shares of stock or bonds shall be applied to the purchase of other property, real or personal, for the benent of the Railway Company, which shall be subjected to the lien of this indenture, or in additions, betterments or improvements to the mortgaged premises or rolling stock for use thereon. which shall likewise be subjected to the lien of this indenture. Any such purchases shall be made or directed by the Railway Company and payment therefor shall be made by tha Trustee to the Railway Company, or upon its order, out of such proceeds in pursuance of the written request of the Railway Company expressed over the signature of its president or one of its vice-presidents by order of its board of directors, which request shall constitute a sufficient warrant, direction or justification to the Trustee for the payment of the money. Or, if not so applied, then said proceeds may be used for the purchase of bonds issued hereunder at a price satisfactory to the Trustee and the Railway Company ; but, if said bonds cannot be so purchased, then such funds may be invested by the Trustee in such securities as are. or may from time to time be, author-

Proceeds of sale of property released.

ized by law in the State of New York for the investment of trust funds. Any securities so purchased by the Trustee shall be held by it as security for the further protection of the bonds issued hereunder, and subject to the lien, terms, covenants and provisions of this indenture; and such securities or any of them may be sold by the Trustee and the proceeds thereof may be invested in other like securities or may be disposed of in any other manner hereinbefore authorized with respect to the proceeds of property released from the lien hereof. So long as there shall be no default on the part of the Railway Company of which the Trustee shall have written notice, the interest paid upon said securities shall be paid to the Railway Company.

Newly acquired property to be subject to the lien hereof.

Any new property acquired by the Railway Company to take the place of any property released hereunder, *ipso facto*, shall forthwith, and without further conveyance, become and be subject to the lien of this indenture as fully as if specifically described herein and mortgaged hereby; but, if requested by the Trustee, the Railway Company shall convey the same to the Trustee by appropriate deed or deeds upon the trusts and for the purposes of this indenture. The Railway Company may from time to time make changes or alterations in or substitutions of any and all leases or trackage rights; but in any such event any modified, altered or substituted leases or trackage rights shall forthwith become bound by and be subject to the terms of this indenture in the same manner as those previously existing.

Release of equipment, etc., no longer of use.

The Railway Company, while in possession of the mortgaged premises, shall also have full power, from time to time, in its discretion, and without interference by the Trustee, to dispose of any portion of the equipment, machinery, tools and implements at any time held subject to the lien of this indenture, which may have become obsolete or otherwise unfit for such use; and the Railway Company agrees to replace the same by new equipment, machinery, tools or implements, which shall

without further conveyance be and become subject to the lien of this indenture. The Railway Company may, in its discretion, change its motive power or that of any line leased or operated by it, and, in its discretion, when duly authorized by law, substitute such motive power as in its judgment shall be for the interest of the property. The substituted motive power and plant connected therewith shall forthwith become subject to the lien of this indenture. If the Trustee shall be in possession of the mortgaged premises under any provision of this indenture, then all the powers conferred upon and reserved to the Railway Company by this Article may be exercised by the Trustee in its discretion; and if the mortgaged premises shall be in the possession of a receiver lawfully appointed, then said powers may be exercised by such receiver with the approval of the Trustee. A certificate signed by the president or one of the vice presidents of the Railway Company may be received by the Trustee as conclusive evidence of any of the facts, matters or conclusions mentioned in this Article required to be established in order to authorize the release of any property hereunder, and shall be full warrant, direction or justification to the Trustee for its action on the faith thereof.

Surrender of possession of real estate of leased railroad companies.

The Railway Company may, without any right of interference by the Trustee, surrender possession of any parcels of real estate belonging to any railroad company which has leased its railroad to the Railway Company as hereinbefore recited; provided that in the judgment of the president or vice president and secretary or treasurer of the Railway Company it shall be inadvisable to retain possession thereof.

Covenant as to insurance moneys.

ARTICLE FOURTEENTH.—In case the Railway Company shall receive any insurance moneys upon any policy of insurance against fire upon any property hereby mortgaged the Railway Company shall expend the same in the construction of buildings, equipment or other property which shall be upon or connected with the property hereby mortgaged, and be subject to

the lien and provision of this indenture; but the Trustee shall not be under any duty to see to the application of such insurance moneys.

Duty of Trustee on default.

ARTICLE FIFTEENTH.—In case of any default as aforesaid, it shall be the duty of the Trustee, upon the written request of the holders of twenty-five per cent. in amount of the bonds hereby secured then outstanding and upon being indemnified as herein provided, to exercise the powers of entry or sale herein conferred, or to commence appropriate judicial proceedings by action, suit or otherwise, or to take such other needful steps for the protection and enforcement of its rights and the rights of the holders of the bonds hereby secured, as the Trustee shall deem most expedient in the interest of the holders of the bonds hereby secured.

Right of holders of majority of bonds to direct Trustee's action.

Anything in this indenture contained to the contrary notwithstanding, the holders of a majority in amount of the bonds hereby secured then outstanding shall have the right from time to time, if they so elect and manifest such election by an instrument or concurrent instruments in writing executed and delivered to the Trustee, to direct and control the method and place of conducting any and all proceedings for any sale of the premises hereby mortgaged and pledged, or for the foreclosure of this indenture, or for the appointment of a receiver; provided, however, that the Trustee shall have the right to refuse to comply with any direction or order of bondholders under this paragraph if in its judgment or in the judgment of its counsel a compliance therewith would be unjustly prejudicial to non-assenting bondholders.

Protection to Trustee.

In all matters of judgment, discretion or policy arising hereunder, including proceedings for any sale of the premises hereby mortgaged and pledged, or for the foreclosure of this indenture, or for the appointment of a receiver, or in any other action or proceeding hereunder, the Trustee shall be fully justified and protected in acting in conformity with any request of the holders of a majority in amount of the bonds hereby secured,

then outstanding, manifested by an instrument or concurrent instruments in writing executed and delivered by such majority of bondholders to the Trustee.

Immunity of Trustee.

The Trustee shall not be concerned with or accountable for the use of any bond hereunder delivered to the Railway Company, or the application of the proceeds of any such bond. The Trustee shall incur no liability to anybody in acting in good faith upon any notice, request, consent, resolution, certificate, bond, document or paper purporting to be genuine and to have been signed by the proper person and believed by the Trustee, after due examination, to be genuine and to have been signed by the proper person. The Trustee, save for its willful default, or for its gross negligence, shall not be personally liable to anybody. The Trustee shall not be responsible for the recording, registration, filing or refiling of this instrument or any instrument of further assurance or for the giving of any notice of the same, or for the affixing or cancellation of any revenue stamps or for the estimation or payment of any taxes; and the Trustee may select and employ in and about the execution of any of the duties incumbent upon it hereunder suitable agents and attorneys, and for their acts and neglects, if selected with reasonable care, the Trustee shall be in no wise responsible.

Requests to and Indemnity of Trustee.

The Trustee shall be under no obligation or duty to perform any act hereunder or to defend any suit in respect hereof, except upon request in writing by the holders of at least five per cent. in amount of the bonds hereby secured then outstanding, nor unless first satisfactorily indemnified, nor unless satisfactory provision is made for furnishing additional indemnity from time to time as in the judgment of the Trustee may be required for its protection; nor shall the Trustee be chargeable with notice of any default on the part of the Railway Company except upon delivery to it of a distinct specification in writing of such default by the holders of at least five per cent. in amount of the bonds hereby secured then outstanding, the ownership of whose bonds, if required, must be proved to the

reasonable satisfaction of the Trustee. Any action taken by the Trustee upon the request of any person who at the time is the owner of any bond or bonds or coupons secured hereby, shall be conclusive and binding upon all future owners of the same bond or bonds and coupon or coupons. The Trustee shall not be bound to recognize any person as a bondholder unless nor until his bonds are submitted to the Trustee for inspection, if required, and his title satisfactorily established, if disputed. The recitals and statements herein and in said bonds and coupons contained shall be taken as statements by the Railway Company and shall not be considered as made by or as imposing any obligation or liability upon the Trustee. Any money received by the Trustee under any provision of this indenture may be treated by it, till it is required to pay out the same conformably herewith, as a general deposit, without any liability for interest save such as, during that time, it allows to its general depositors.

Trustee's compensation.

The Railway Company agrees, from time to time, on demand, to pay to the Trustee reasonable compensation for its services hereunder; also to make reimbursement to the Trustee for all counsel fees, compensation of attorneys and agents and other expenditures made by the Trustee hereunder, with interest thereon; also to indemnify and save the Trustee harmless against any and all liabilities of any kind which the Trustee may incur in the exercise and performance of its powers and duties hereunder; and for such indemnification, reimbursement and payment of Trustee's compensation a first lien is hereby imposed in favor of the Trustee upon all the property and funds hereby mortgaged and pledged.

Further immunity of Trustee.

The Trustee shall be under no obligation to see to the delivery to it of the stocks or other personal property intended to be mortgaged or pledged hereunder. It shall be no part of the duty of the Trustee to see to the insurance of any part of the property hereby mortgaged or pledged, or itself to effect such insurance. The Trustee may become the owner of bonds and cou-

pons secured hereby with the same rights which it would have if it were not Trustee. The Trustee may, in its discretion, advise with legal counsel to be selected and employed by it at the expense of the Railway Company, and anything done or suffered in good faith by the Trustee in accordance with the opinion of counsel shall be conclusive in favor of the Trustee on the Railway Company and on all holders of bonds and coupons secured hereby. Counsel for Trustee.

The duties of the Trustee to the Railway Company and to the holders of the bonds and coupons secured hereby shall be determined solely by the provisions of this instrument and by the laws of the State of New York.

The trust estate, property and funds, shall be primarily liable to third persons for all debts contracted by the Trustee and for all damages to persons or property injured and for salaries and for non-performance of contracts and for all other torts, obligations and liabilities arising during any period wherein the Trustee shall manage the trust property or any of it, upon entry as aforesaid, or otherwise ; and the Trustee shall not be personally liable in respect of any such matters. It shall be no part of the duty of the Trustee to see that any of the property intended to be mortgaged or pledged hereunder, or any property hereafter acquired by the Railway Company or released from the lien of any mortgage securing outstanding old bonds or collateral bonds, is properly and legally subjected to the lien hereof ; and in executing this indenture the Trustee makes no covenant or representation as to the title or interest of the Railway Company in or to the property described herein. Further immunity of Trustee.

ARTICLE SIXTEENTH.—No holder of any bond or coupon hereby secured shall have the right to institute any suit, action or proceeding at law or in equity upon or in respect of this indenture, or for the execution of any trust or power hereby created ; or for the appointment of a receiver, or for any other remedy under or upon this indenture, unless such holder shall No suit by bondholders permitted without prior request and indemnity to Trustee.

previously have given to the Trustee written notice of any existing default and of the continuance thereof as hereinbefore provided ; nor unless also the holders of ten per cent. in amount of the bonds hereby secured then outstanding shall have made written request upon the Trustee and shall have afforded to it reasonable opportunity either to proceed itself to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name ; nor unless also such holder or holders shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred in or by reason of such action, suit or proceeding, and the Trustee shall have refused or neglected to comply with such request within a reasonable time thereafter ; and such notification, request and offer of indemnity are hereby declared, in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this indenture and to any action or cause of action for foreclosure or for the appointment of a receiver, or for any other remedy hereunder ; it being understood and intended that no one or more holders of bonds or coupons shall have any right in any manner whatever to affect, disturb or prejudice the lien of this indenture by his or their action, or to enforce any right hereunder, except in the manner herein provided, and that all proceedings hereunder shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all the holders of such outstanding bonds and coupons.

Resignation of Trustee.

ARTICLE SEVENTEENTH.—The Trustee, or any trustee hereafter appointed, may resign and be discharged from the trusts created by this indenture, by giving notice of such resignation to the Railway Company and also to the bondholders, by publication at least twice a week for four successive weeks in two daily newspapers published in the City of New York, and by due execution of the conveyance herein required.

Removal of Trustee.

The Trustee may be removed at any time by an instru-

ment in writing executed by the holders of seventy-five per cent. in amount of the bonds hereby secured then outstanding; but no such removal shall be made before default hereunder without the written consent of the Railway Company. In case the Trustee, or any trustee hereafter appointed, shall at any time resign or be removed or otherwise become incapable of acting, a successor or successors may be appointed by the holders of a majority in amount of the bonds hereby secured then outstanding, by an instrument or concurrent instruments or counterparts signed by such bondholders or their attorneys in fact duly authorized; provided, nevertheless, and it is hereby agreed and declared that in case there shall at any time be a vacancy in the office of Trustee hereunder, the Railway Company may by an instrument executed by order of its board of directors appoint a trustee to fill such vacancy until a new trustee shall be appointed by the bondholders as herein authorized. The Railway Company shall thereupon publish notice of such appointment by it once a week for four successive weeks in two daily newspapers published in the City of New York; but any new trustee so appointed by the Railway Company shall immediately and without further act be superseded by a trustee appointed in the manner above provided by the holders of a majority in amount of the bonds hereby secured, if such appointment be made by the bondholders within six months after the first publication of such last mentioned notice; otherwise the trustee so appointed by the Railway Company shall continue to act hereunder. Every such new trustee appointed in place of the Trustee, or its successor in the trust, shall always be a trust company in good standing authorized to accept such trust and doing business in the City of New York, and having a capital and surplus aggregating at least $1,000,000, if there be such a trust company willing and able to accept the trust upon reasonable or customary terms. Any such new trustee appointed hereunder shall execute, acknowledge and deliver to

Appointment of successor Trustee.

New trustee to be a trust company.

Acceptance of trust vesting mortgaged property in new Trustee.

the Railway Company an instrument accepting such appointment hereunder, and thereupon such new trustee shall, without further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of its predecessor in the trust hereunder with like effect as if originally named as trustee herein; but the Trustee retiring shall nevertheless, on the written demand of the new trustee, execute and deliver an instrument conveying and transferring to such new trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the trustee so retiring, and shall duly assign, transfer and deliver to the new trustee so appointed in its place all properties and moneys held by it under this indenture, subject, nevertheless, to the retiring trustee's first lien on all the mortgaged and pledged properties and moneys for its reasonable compensation and reimbursement of all its costs and expenses hereunder. Should any deed, conveyance or instrument in writing from the Railway Company be required by any new trustee for more fully and certainly vesting in and confirming to it the said estates, properties, rights, powers, trusts and duties, then any and all such deeds, conveyances and instruments in writing shall, on request of such new trustee, be made, executed, acknowledged and delivered by the Railway Company.

Possession of premises until default.

ARTICLE EIGHTEENTH.—Until default shall have been made in the due and punctual payment of the interest or principal of the bonds hereby secured, or of some part thereof, or in the due and punctual performance and observance of some covenant or condition hereof obligatory upon the Railway Company, and until such default shall have continued beyond the period of grace, if any, herein provided in respect thereof, the Railway Company, its successors and assigns, shall be suffered and permitted to retain actual possession of all the railroad property and premises hereby mortgaged except the shares of stocks and bonds hereinbefore mortgaged and pledged, and to manage, operate and use the same and every part thereof, with the

rights and franchises appertaining thereto and the business thereof, and to collect, receive and take the tolls, earnings, rents, issues, profits and other income thereof; but the Railway Company hereby agrees and covenants that such income, after paying the expenses of operating said railroads and taxes and rentals thereon, and interest due and payable upon any outstanding underlying bonds, shall be first applied to the payment of the interest accruing and maturing upon the bonds issued hereunder and secured hereby. Application of income.

Nothing contained in this indenture, or in any bond hereby secured, shall prevent any consolidation or merger with or sale to the Railway Company of the railroad and property of any other corporation or any consolidation or merger of the Railway Company with any other corporation, or any conveyance, transfer or lease, subject to the continuing lien of this indenture and to all the provisions thereof, of all the mortgaged premises to any railroad corporation lawfully entitled to acquire the same; provided, however, that such consolidation, merger, conveyance, transfer or lease shall be upon such terms as to fully preserve and not impair the lien and security of this indenture, or any of the rights or powers of the Trustee or of the bondholders hereunder. Consolidation, etc., not prohibited.

ARTICLE NINETEENTH.—If, when the bonds hereby secured shall have become due and payable, the Railway Company shall well and truly pay or cause to be paid the whole amount of the principal and interest due upon all of the bonds hereby secured then outstanding, or shall provide for such payment by depositing with the Trustee hereunder, for the payment of such bonds and interest thereon, the entire amount due for principal and interest, and shall also pay or cause to be paid all other sums payable hereunder by the Railway Company, and shall well and truly keep, perform and observe all the things herein required to be kept, performed and observed by it according to the true intent and meaning of this indenture, then and in that case the premises and property hereby conveyed and all rights and interest therein and thereto shall revert Defeasance.

to the Railway Company, or to whosoever may be entitled thereto, and the estate right, title and interest of the Trustee therein shall thereupon cease, determine and become void; and the Trustee shall in such case, on demand of the Railway Company and at the cost and expense of the latter, enter satisfaction and discharge of this indenture upon the records; otherwise the same shall be, continue and remain in full force and virtue.

Covenant to waive stay or extension laws.

ARTICLE TWENTIETH.—The Railway Company further agrees and covenants that it will not at any time insist upon or plead or in any manner whatever claim, or take the benefit or advantage of any stay or extension law now or at any time hereafter in force, nor will it claim, take, or insist upon any benefit or advantage from any law now or hereafter in force providing for the valuation or appraisement of the mortgaged property or premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained or to the decree of any court of competent jurisdiction; nor will it, after any such sale or sales, claim or exercise any right under any statute to redeem the property so sold or any part thereof, or obstruct or impede the accepted purchaser from taking possession of the same; and it hereby expressly waives all benefit or advantage of any such law or laws, and covenants that it will not hinder, delay or impede the execution of any power herein granted and delegated to the Trustee, but will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

Covenant for further assurance.

The Railway Company further agrees and covenants that it will also do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all and every such further acts, deeds, transfers and assurances for the better assuring, conveying and confirming unto the Trustee all and singular the premises, estates and properties hereby conveyed, or intended so to be, as the Trustee or a majority in amount of the holders of bonds issued and outstanding hereunder shall reasonably require for better ac-

complishing the provisions and purposes of this indenture and for better securing payment of the principal and interest of the bonds intended to be secured hereby. All the covenants, stipulations, promises and agreements in this indenture contained by or on behalf of the Railway Company shall be for the sole and exclusive benefit of the parties hereto and of the holders of the bonds hereby secured, and shall bind and apply to the successors and assigns of said Railway Company, whether so expressed or not. Every such successor and assign shall possess and may exercise each and every right and power of the Railway Company hereunder.

Agre hereof applicable only to parties, successors and assigns.

No recourse under or upon any obligation, covenant or agreement contained in this indenture, or in any bond or coupon hereby secured, or under any judgment obtained against the Railway Company, or otherwise, shall be had against any incorporator, stockholder, officer or director of the Railway Company or any successor corporation, either directly or through the Railway Company, by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any statute or otherwise. This indenture and the obligations hereby secured are solely corporate obligations, and no personal liability whatever shall attach to or be incurred by the stockholders, directors or officers of the Railway Company, or any successor corporation, or any of them, under or by reason of any of the obligations, covenants or agreements contained in this indenture, or in any of the bonds or coupons hereby secured, nor shall any such personal liability be implied therefrom; and any and all personal liability of every name and nature, whether at common law or in equity, or by statute or constitution, of every such stockholder, officer or director is hereby expressly waived as a condition of and consideration for the execution of this indenture and the issue of such bonds and coupons.

Immunity of stockholders, officers and directors from personal liability.

ARTICLE TWENTY-FIRST.—Any request or other instrument required by this indenture to be signed and executed by bondholders may be in any number of

Form and proof of requests by bondholders, etc.

concurrent instruments of similar tenor, and may be executed by such bondholders in person, or by agent or attorney appointed by an instrument in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such agent or attorney, or of the holding by any person of coupon bonds transferable by delivery, shall be sufficient for any purpose of this indenture, and shall be conclusive in favor of the Trustee with regard to any action taken by it under such request or other instrument, if made in the following manner, viz.: (1) The fact and date of the execution by any person of any such request or of any other instrument or writing may be proved by the certificate of any notary public or other officer authorized to take, either within or without the State of New York, acknowledgments of deeds to be recorded in said State, certifying that the person signing such request or other instrument acknowledged to him the execution thereof; or by the affidavit of a witness to such execution. (2) The amount of coupon bonds transferable by delivery held by any person executing any such request or other instrument as a bondholder, and the amounts and issue numbers of the bonds held by such person and the date of his holding the same, may be proved by a certificate executed by any trust company, bank or other depositary (wheresoever situated) whose certificate shall be deemed satisfactory by the Trustee, showing that at the date therein mentioned such person had on deposit with such depositary or exhibited to it the bonds described in such certificate. (3) The ownership of registered bonds shall be proved by the books for the registry of such bonds provided for in Article First hereof. The Trustee shall, however, not be bound to recognize any person as a bondholder unless nor until his bonds are submitted to the Trustee for inspection, if required, and his title satisfactorily established, if disputed.

Definitions.

ARTICLE TWENTY-SECOND.—Except when otherwise indicated, the words "the Trustee" or "said Trustee," or any other equivalent term, as used in this indenture, shall be held and construed to mean the

Trustee or Trustees for the time being, and the words "bond," "bondholder" and "holder" shall include the plural as well as the singular number.

ARTICLE TWENTY-THIRD.—Upon the terms and conditions for the protection and security of the Trustee, herein stated (of which those stated in Article Fifteenth hereof shall be deemed to be paramount), and not otherwise, the Morton Trust Company hereby accepts the trusts of this instrument, and the Railway Company and all holders of bonds and coupons secured hereby expressly assent and agree to and acknowledge themselves bound by said terms and conditions. Acceptance of trusts.

IN WITNESS WHEREOF, the parties hereto of the first and second parts have duly caused these presents to be executed in duplicate in their respective corporate names by their respective presidents or vice-presidents and their respective corporate seals to be hereto affixed and attested by their respective secretaries or assistant secretaries, the day and year first above written.

METROPOLITAN STREET RAILWAY COMPANY,
by H. H. VREELAND,
President.

[Corporate Seal.]

Attest:
CHARLES E. WARREN,
Secretary.

Signed, sealed and delivered on behalf of Metropolitan Street Railway Company in the presence of
FELIX M. GERNSHEIM.

MORTON TRUST COMPANY,
by J. K. CORBIERE,
Second Vice-President.

[Corporate Seal.]

Attest:
H. M. FRANCIS,
Secretary.

Signed, sealed and delivered on behalf of Morton Trust Company in the presence of)
G. L. WILMERDING.

Acknowledgment by Railway Company.

STATE OF NEW YORK, } ss.:
County of New York, }

On the 21st day of March, in the year 1902, before me personally came Herbert H. Vreeland, to me known, who, being by me duly sworn, did depose and say that he resided in the City of New York; that he is the President of the Metropolitan Street Railway Company, one of the corporations described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

FELIX M. GERNSHEIM,
Notary Public,
New York County.

[Notarial Seal.]

Acknowledgment by Trustee.

STATE OF NEW YORK, } ss.:
County of New York, }

On the 21st day of March, in the year 1902, before me personally came James K. Corbiere, to me known, who, being by me duly sworn, did depose and say that he resided in Caldwell, New Jersey; that he is the Second Vice-President of the Morton Trust Company, one of the corporations described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

FELIX M. GERNSHEIM,
Notary Public,
New York County.

[Notarial Seal.]

METROPOLITAN STREET RAILWAY COMPANY.

Certificate of the Vote at Special Stockholders' Meeting to Authorize Refunding Mortgage to Morton Trust Company, as Trustee.

We, the undersigned, Chairman and Secretary respectively, of a special meeting of the stockholders of the Metropolitan Street Railway Company called for the purpose of securing the consent of stockholders owning at least two-thirds of the capital stock of the corporation to a mortgage upon its property and franchises to the Morton Trust Company, as Trustee, to secure an issue of bonds to the principal amount of $65,000,000, do hereby certify as follows:

1. That the said Metropolitan Street Railway Company is a railroad corporation duly incorporated and existing under the laws of the State of New York with an outstanding capital stock of fifty-two million dollars ($52,000,000) divided into five hundred and twenty-thousand (520,000) shares of one hundred dollars ($100) each. That a notice, stating the time, place and object of said meeting was duly mailed to each stockholder at his post-office address at least three weeks previous to the meeting, and was also published at least once a week for three weeks successively in two newspapers regularly printed in the City and County of New York, where said company has its principal office.

2. That at the time and place specified in said notice stockholders owning at least two-thirds of the capital stock of said corporation appeared in person or by proxy and organized said meeting by choosing the undersigned, Daniel B. Hasbrouck, as Chairman and the

undersigned, Charles E. Warren, as Secretary thereof respectively.

3. That the following resolution was duly offered and seconded :

" WHEREAS, the Board of Directors have approved a proposed mortgage by this company to the Morton Trust Company, as Trustee, to be dated March 21, 1902, and due April 1, 2002, to be known as the company's Refunding Mortgage, to secure bonds issued and to be issued thereunder to an amonnt not to exceed in the aggregate Sixty-five million dollars ($65,000,000), to be known as the company's Refunding One Hundred Year Gold Bonds, and have submitted such mortgage to this meeting of stockholders ; it is

Resolved, that consent is hereby given to the Metropolitan Street Railway Company to execute, issue and deliver a mortgage in the sum of Sixty-five million dollars ($65,000,000) upon the railroads, railroad routes, property and franchises of the company to secure the payment of One Hundred Year Gold Bonds of the company to the amount of Sixty-five million dollars ($65,000,000), such bonds to bear interest at a rate not exceeding four per centum per annum ; and it is further

Resolved, that the printed form of said mortgage as submitted to this meeting, and of the coupon and registered bonds to be secured thereby, are hereby in all respects approved."

4. That stockholders owning 405,175 shares of the capital stock of said corporation voted in favor of said resolution and stockholders owning 1,571 shares of said stock voted against said resolution, and that stockholders owning at least two-thirds of the entire capital stock of said corporation voted in favor of said resolution and the same was adopted, and that by such

vote stockholders owning at least two-thirds of the entire capital stock of the corporation consented to the issue of said mortgage.

IN WITNESS WHEREOF we have made, signed, verified and acknoweledged this certificate as of the 20th day of March, 1902.

DANIEL B. HASBROUCK,
Chairman.

CHARLES E. WARREN,
Secretary.

STATE OF NEW YORK, }
City and County of New York, } ss. :

DANIEL B. HASBROUCK and CHARLES E. WARREN, being severally duly sworn, each for himself deposes and says, that he the said Daniel B. Hasbrouck was Chairman of the meeting mentioned in the foregoing certificate, and that he the said Charles E. Warren was Secretary of the said meeting; that he has read the foregoing certificate subscribed by him and knows the contents thereof, and that the same is true.

DANIEL B. HASBROUCK,
CHARLES E. WARREN.

Sworn to before me this 20th day of March, 1902.

FELIX M. GERNSHEIM,
Notary Public,
New York County.

{ NOTARIAL SEAL. }

STATE OF NEW YORK, }
City and County of New York, } ss. :

On this 20th day of March, 1902, before me personally appeared Daniel B. Hasbrouck and Charles E. Warren, to me known, and known to me to be the same persons who executed the foregoing certificate and the

foregoing verification, and each acknowledged to me that he executed such certificate and such verification.

IN WITNESS WHEREOF, I have hereunto set my hand and my notarial seal this 20th day of March, 1902.

FELIX M. GERNSHEIM,
Notary Public,
New York County.

{ NOTARIAL SEAL. }

STATE OF NEW YORK,

BOARD OF RAILROAD COMMISSIONERS.

ALBANY, March 21, 1902.

The Board of Railroad Commissioners, under the provisions of subdivision 10 of Section 4 of the Railroad Law, hereby consents to the issue of the foregoing mortgage for sixty-five million dollars ($65,000,000) by the Metropolitan Street Railway Company.

By the Board,

[SEAL.] E. C. MCENTEE,
Assistant Secretary.

Attest :

Exhibit E.

Order Making Metropolitan Street Railway Company Party Defendant.

IN THE
CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and DEGNON CONTRACTING COMPANY, Complainants, AGAINST NEW YORK CITY RAILWAY COMPANY, Defendant.	In Equity.
IN THE MATTER OF The Petitioner of METROPOLITAN STREET RAILWAY COMPANY.	

On the 1st day of October, 1907, this cause came on to be heard upon the petition of Metropolitan Street Railway Company, to be made a party defendant in this suit and for other relief, on consideration whereof, and after hearing J. Parker Kirlin, for said petitioner; James Byrne, for the complainants; and James L. Quackenbush for the defendant,

IT IS ORDERED that the petitioner, Metropolitan Street Railway Company, be and it hereby is made a party defendant in this cause.

IT IS FURTHER ORDERED that the receivership in this cause be and the same hereby is extended to the prop-

erties of said petitioner Metropolitan Street Railway Company as prayed in said petition, and that Adrian H. Joline and Douglas Robinson, heretofore appointed receivers in this cause, be and they hereby are appointed receivers of the properties of said petitioner, with the powers and duties prescribed by order entered in this cause September 24h, 1907, appointing them receivers in this cause.

AND IT IS FURTHER ORDERED that each and every of the officers, directors, agents and employees of said petitioner Metropolitan Street Railway Company, and all other persons whomsoever be, and they are hereby required and commanded forthwith, upon demand of the said receivers or their duly authorized agent, to turn over and deliver to said receivers or their duly constituted representative, any and all books of account, vouchers, papers, deeds, leases, contracts, bills, notes, accounts, moneys or other property in his or their hands or under his or their control, and each of such directors, officers, agents and employees is hereby commanded and required to obey and perform such orders as may be given to them from time to time by the said receivers or their duly constituted representatives, in conducting the operation of the said system and in discharging their duties as receivers.

And said petitioner, said Metropolitan Street Railway Company and its officers, directors, agents and employees and all other persons claiming to act by, through or under said petitioner and all other persons whomsoever are hereby enjoined from interfering in any way whatsoever with the possession or management of any part of said property over which the receivers have been appointed or interfering in any way to prevent the discharge of their duties or their operating the same; and any party in interest may apply for direction.

Dated New York, October 1st, 1907.

E. HENRY LACOMBE,
U. S. Circuit Judge.

Filed October 1st, 1907.

Exhibit F.

Petition of Morton Trust Company.

IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of MORTON TRUST COMPANY.

TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

The Petition of Morton Trust Company, a corporation organized and existing under the Laws of the State of New York, alleges as follows :

I. Your petitioner is a corporation organized and existing under the Laws of the State of New York.

II. At all times hereinafter mentioned Metropolitan Street Railway Company was and still is a corporation duly organized and existing under the Laws of the State of New York.

III. Heretofore by its mortgage or deed of trust dated March 21, 1902 the said Metropolitan Street Railway Company, in order to secure an issue of bonds not exceeding in the aggregate the principal sum of $65,000,000 at any time outstanding, payable April 1, 2002, with interest at the rate of 4% per annum, payable semi-annually on the first days of April and October, did grant and convey unto Morton Trust Company

as Trustees all the Street surface and railroads and property owned by it, and all the street surface railroads and property held or operated by it as lessee under certain leases as in said mortgage or deed of trust more specifically described.

Said Metropolitan Street Railway Company thereafter and in accordance with the provisions of said mortgage or deed of trust, issued its bonds, secured by said mortgage, to the amount of $16,604,000 as your petitioner is informed and believes, and the same are now outstanding in the hands of *bona fide* owners and holders for value, and are, as your petitioner is advised, a lien upon the property of the said Metropolitan Street Railway Company described in said mortgage. For a particular statement of the terms and conditions of said mortgage, your petitioner prays leave to refer thereto.

IV. In a suit in this Court in which the Pennsylvania Steel Company and The Degnon Contracting Company were complainants and New York City Railway Company defendant by an order of this Court made on September 24, 1907, Adrian H. Joline and Douglas Robinson were appointed receivers of the New York City Railway Company and they duly qualified as such receivers and entered upon the possession of said property and are now acting as such receivers and as such are in possession of the property of the New York City Railway Company.

Thereafter and on or about October 1, 1907, the Metropolitan Street Railway Company on its petition, was made a party to said cause and Adrian H. Joline and Douglas Robinson were appointed receivers of the properties of Metropolitan Street Railway Company and thereafter they duly qualified as such receivers, and they are now both as receivers of the Metropolitan Company and as receivers of the New York City Company in possession of all the railroads, properties and franchises described in said mortgage to your petitioner, dated March 21, 1902.

V. Your petitioner is advised and alleges that in and by the said mortgage to your petitioner dated March 21, 1902, it is provided that in case in any judicial proceedings by any party other than the trustee a receiver should be appointed of the Metropolitan Street Railway Company, your petitioner as trustee under said mortgage should be entitled forthwith to exercise certain rights and powers conferred by said mortgage, including the right to collect and receive the tolls, earnings, incomes, rents, issues and profits of the mortgaged property.

Persons owning or representing, as your petitioner is informed, a large amount of bonds issued under and secured by said mortgage to your petitioner dated March 21, 1902, have requested your petitioner to proceed to enforce their rights under the said mortgage and to that end to institute such judicial proceedings as to it may seem most advisable.

VI. Your petitioner is about to file in this Court a bill for the enforcement of its rights under said mortgage dated March 21, 1902, and desires to make the said Adrian H. Joline and Douglas Robinson, who as receivers as aforesaid, are now in possession of said property embraced in said mortgage, parties thereto.

Your petitioner therefore prays that by an order of this Court it may be permitted to make the said Adrian H. Joline and Douglas Robinson parties to said bill to be filed by it, and it may have such other and further relief as may be just.

MORTON TRUST COMPANY,
By
[SEAL] H. M. FRANCIS,
Secretary,
Petitioner.

BRONSON WINTHROP,
Solicitor for Petitioner,
32 Liberty Street,
New York City,
N. Y.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:
CITY AND COUNTY OF NEW YORK,

HARRY M. FRANCIS being duly sworn doth depose and say that he is the Secretary of Morton Trust Company, the Petitioner named in the foregoing petition. That he has read the foregoing petition and knows the contents thereof and that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes the same to be true.

H. M. FRANCIS.

Sworn to before me this 8th day of Oct., 1907.

E. J. BLEEZARDE,
Notary Public,
Richmond Co.,
Certificate filed in New York Co.

(SEAL)

Exhibit G.

Order Making Receivers Parties to the Bill of Complaint of Morton Trust Company.

THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of MORTON TRUST COMPANY.

And now comes the above-named Petitioner and files its petition, praying for leave to make Adrian H. Joline and Douglas Robinson heretofore appointed by this Court Receivers of Metropolitan Street Railway Company, parties to the Bill to enforce certain rights of the petitioner as Trustee under the mortgage or deed of trust, dated March 21, 1902, and executed by Metropolitan Street Railway Company to Morton Trust Company as trustee, which bill is to be filed by the Petitioner ; on consideration whereof, it is on motion of Bronson Winthrop, Esq., solicitor for said petitioner,

ORDERED that the prayer of said petitioner be granted, and that said Petitioners have leave to make the said Adrian H. Joline and Douglas Robinson as Receivers of New York City Railway Company and said Adrian H. Joline and Douglas Robinson as Receivers of Metropolitan Street Railway Company parties to the said bill.

Oct. 8th, 1907.

E. HENRY LACOMBE,
U. S. C. J.

Filed October 8th, 1907.

Exhibit H.

Bill of Complaint of Morton Trust Company.

CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

MORTON TRUST COMPANY, Complainant, AGAINST METROPOLITAN STREET RAILWAY COMPANY, NEW YORK CITY RAILWAY COMPANY, ADRIAN H. JOLINE and DOUGLAS ROBINSON as Receivers of New York City Railway Company, ADRIAN H. JOLINE and DOUGLAS ROBINSON as Receivers of Metropolitan Street Railway Company, THE PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY, Defendants.	In Equity.

TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK:

Morton Trust Company, a corporation organized and existing under the laws of the State of New York and a citizen of said State, brings this, its Bill of Complaint, against Metroplitan Street Railway Company, a corporation organized and existing under and by virtue of the laws of the State of New York and a citizen of said State, and New York City Railway Com-

pany, a corporation organized and existing under and by virtue of the laws of the State of New York and a citizen of said State, and Adrian H. Joline and Douglas Robinson, both citizens of the State of New York, as receivers of said New York City Railway Company, and said Adrian H. Joline and Douglas Robinson as Receivers of said Metropolitan Street Railway Company, and The Pennsylvania Steel Company, a corporation organized and existing under the laws of the State of Pennsylvania and a citizen of said State, and The Degnon Contracting Company, a corporation organized and existing under the laws of the State of New Jersey and a citizen of said State; and thereupon your orator complains and alleges as follows:

I. Your orator is a corporation duly organized and existing under and by virtue of the laws of the State of New York and a citizen of said State.

II. On information and belief, the defendant Metropolitan Street Railway Company (hereinafter in this bill called "the Metropolitan Company" is a corporation organized and existing under the laws of the State of New York and a citizen of said State, having been organized by a merger and consolidation at divers times of Houston, West Street & Pavonia Ferry Railroad Company, Broadway Railway Company, South Ferry Railroad Company, The Metropolitan Crosstown Railway Company, The Lexington Avenue & Pavonia Ferry Railroad Company and The Columbus and Ninth Avenue Railroad Company, all of said companies having been street surface railroad companies organized and existing under the laws of the State of New York.

On information and belief the defendant New York City Railway Company (hereinafter in this bill called "the New York Company") is a corporation organized and existing under the laws of the State of New York and a citizen of said State, having been organized under the name and style of "Interurban Street Railway Com-

pany"; subsequently and pursuant to proceedings duly had, the said Interurban Street Railway Company changed its name and is now known as "New York City Railway Company."

On information and belief the defendant The Pennsylvania Steel Company is a corporation duly organized and existing under the laws of the State of Pennsylvania, and a citizen of said State and the defendant The Degnon Contracting Company is a corporation duly organized and existing under the laws of the State of New Jersey and a citizen of said State.

III. Heretofore and prior to March 21, 1902, the defendant Metropolitan Company in the exercise of its powers under the laws of the State of New York, in accordance with resolutions duly passed by its Board of Directors and by its stockholders at respective meetings thereof duly called and held, duly authorized the issue of a series of bonds to be executed under its corporate seal and attested by the signatures of its president or one of its vice-presidents, and attested by its secretary or an assistant secretary, and to be issued to an amount not exceeding in the aggregate the principal sum of Sixty-five million dollars ($65,000,000) at any one time outstanding; said bonds to be either coupon or registered, the coupon bonds bearing date April 1, 1902 and the registered bonds bearing date at the time of their respective issue; by the terms of which bonds the Metropolitan Company promised to pay, in the case of coupon bonds, to the bearer thereof, and, in the case of registered bonds, to the registered owner thereof or his assigns, at the office or agency of the Metropolitan Company in the City of New York on the first day of April in the year 2002, the sum of One thousand dollars ($1,000) in the case of coupon bonds and the sum of One thousand dollars ($1,000) or multiples thereof in the case of registered bonds, gold coin of the United States of America, of or equal to the then standard of weight and fineness, and to pay interest thereon, in the

case of coupon bonds, from April 1, 1902, and, in the case of the registered bonds, from the first day of April or October, as the case might be, next preceding the date thereof, payable at its said office in like gold coin, semi-annually on the first days of April and October in each year, in the case of coupon bonds, upon presentation and surrender, as they might severally mature, of the interest coupons thereto annexed, and, in the case of registered bonds, to the registered owner thereof or his assigns. The form and tenor of said bonds are fully set forth in the mortgage hereinafter referred to.

IV. On or about March 21, 1902, the Metropolitan Company being thereunto duly authorized by the action of its Board of Directors and with the consent of stockholders owning at least two-thirds of the entire capital stock of the Metropolitan Company, such stock having been represented and voted upon in person or by proxy at a special meeting of the stockholders duly called for that purpose, in pursuance to the statute in such case made and provided, and with the consent of the Board of Railroad Commissioners of the State of New York, the consent of said stockholders evidenced by a sworn certificate of the vote of said meeting and the consent of said Board, both in due form, having been contemporaneously filed and recorded in accordance with law in the office of the Register of the County of New York in which County the Metropolitan Company had its principal place of business and wherein its property was situated, duly made, executed and delivered to your orator, as trustee, its certain mortgage or deed of trust dated on that day, wherein and whereby in order to secure the payment of the principal and interest of all such bonds at any time issued and outstanding and to secure the performance and observance of all the covenants and conditions therein contained, it granted, bargained, sold, released, conveyed, assigned, transferred and set over unto your orator, as trustee, its successors and assigns forever,

all and singular, the railroads, railroad routes, estates, leaseholds, properties, rights, privileges and franchises described as follows, to-wit :

I.

STREET SURFACE RAILROADS IN THE COUNTY OF NEW YORK, CITY OF NEW YORK, AND STATE OF NEW YORK, OWNED BY THE METROPOLITAN STREET RAILWAY COMPANY, DESCRIBED AS FOLLOWS :

HOUSTON, WEST STREET AND PAVONIA FERRY, OR AVENUE C LINE.

Commencing at the intersection of Duane Street with West Street, thence through and along Duane Street with a double track to Greenwich Street, thence through and along Greenwich Street with a single track to Charlton Street, thence through and along Charlton Street with a single track to Prince Street, thence through and along Prince Street with a single track to Bowery, thence upon and across the Bowery with a single track to Stanton Street, thence through and along Stanton Street with a single track to Pitt Street, thence through and along Pitt Street with a single track to Avenue C, thence through and along Avenue C, with a single track to Third Street, thence through and along Avenue C, from Third Street with a double track to the northern extremity of the said Avenue C, thence through and along Third Street, connecting with the double track in Avenue C, with a single track to First Avenue, thence through and along First Avenue with a single track to East Houston Street, thence through and along East Houston Street with a single track to the Bowery, thence upon and across the Bowery with a single track to West Houston Street, thence through and along West Houston Street, with a single track to Washington Street, thence through and along Washington Street with a single track to Duane Street; thence through and along Duane Street,

connecting with the double track to the place of beginning, being the route described in Chapter 625 of the Laws of 1868 of the State of New York.

Extension on Avenue C Through Seventeenth Street, Etc.

From Avenue C through Seventeenth and Eighteenth Streets, by single track in each street, to Avenue A, thence through and along Avenue A, by double track to Twenty-third Street; thence through and along Twenty-third Street, by double track to First Avenue; thence through and along First Avenue, by double track, to Thirty-sixth Street; thence through and along Thirty-sixth Street, by single track, to Lexington Avenue: and also through and along Thirty-fifth Street, by single track, from First Avenue to Lexington Avenue; thence through and along Lexington Avenue, by single or double track, to Forty-second Street, thence through and along Forty-second Street by double track to Fourth Avenue. Also, by single track through and along Charlton Street, from Greenwich Street to West Street; and, by single track, through and along West Houston Street from Washington Street to West Street; thence through and along West Street by double track, to Chambers Street. Also, through and along Tenth Street, connecting with the double track in Avenue C, by single track to Avenue D; thence through and along Tenth Street, by double track, to the East River. Also, connecting with the double track on Tenth Street, through and along Avenue D, by single track, to Eleventh Street; thence through and along Eleventh Streeth, by single track, to and connecting with the double track on Avenue C, being the route described in Chapter 19 of the Laws of 1871 of the State of New York.

Chamber Street and Grand Street Ferry Line.

Commencing at the foot of Roosevelt Street, East River, thence through, upon and along South Street, with

double tracks to James Slip ; thence through, upon and along James Slip with double tracks, to New Chambers Street : thence through, upon and along New Chambers Street to Chatham Street with double tracks ; thence across Chatham Street to Chambers Street, with single track ; thence through, upon and along Chambers Street, with single track, to Pavonia Avenue Ferry, foot of Chambers street, North River ; thence returning, with single or double tracks, through, upon and along West Street to Duane Street ; thence through, upon and along Duane Street, with single track to and across Chatham Street to connect with the double tracks at New Chambers Street. Also from New Chambers Street, at Madison Street, through, upon and along Madison Street, with double tracks to Grand Street ; thence through, upon and along Grand Street, with single or double tracks to thr ferry at the foot of Grand Street. Also, from Madison Street, at Jackson Street, through, upon and along Jackson Street, with double or aingle tracks to Cherry Street ; thence through, upon and along Cherry Street, with double or single tracks to the East River ; thence through, upon and along East Street, with double or single tracks, to connect with the tracks at the foot of Grand Street, East River, being the route described in the resolution of the Common Council of the City of New York, adopted on December 30, 1884.

Broadway Surface Line.

Commencing at the southerly end of Broadway near the Battery and running thence with double tracks through and along Broadway, and across Fourteenth Street to and along Union Square to a point at or near the intersection of Fifteenth Street and West Union Square, being the route described in the resolution of the Common Council of the City of New York, adopted December 5, 1884.

South Ferry Line.

Commencing at the northerly side of Vesey Street; thence through, upon and along Church Street, with double track to Morris Street; thence through, upon and along Morris Street, with a double track to Greenwich Street; thence through, along and upon Greenwich Street, with a double track to Battery Place; thence through, upon and along Battery Place, with a double track to State Street; thence through, upon and along State Street with a single track to Whitehall Street; thence through, upon and along Whitehall Street, with a single track to the South Ferry; returning through, upon and along Whitehall Street to Bowling Green; thence through, upon and along the southerly side of Bowling Green to connect with double tracks at Battery Place, being the route described in Chapter 508 of tha Laws of 1874 of the State of New York.

Metropolitan Cross-Town Line,

Commencing upon East Street, at or near the Grand Street Ferry, and running thence through, upon and along East Street, with a double track to Delancey Slip or Street; thence through, upon and along Delancey Street, with a double track to the Bowery; thence through, upon and across the Bowery to Spring Street; thence through, upon and along Spring Street with a double track, to South Fifth Avenue; thence through, upon and along South Fifth Avenue, with a double track, to Fourth Street; thence through, upon and along Fourth Street, with a double track to Macdougal Street; thence through, up and along Macdougal Street, with a double track, to Waverly Place; thence through, upon and along Waverly Place, to Christopher Street, with a double track; thence through aad along Waverly Place, from Christopher Street to Bank Street with a single track; thence through, upon and along Bank Street, with a

double track to Greenwich Avenue; thence through, upon and along Greenwich Avenue, with a double track, to Thirteenth Street and Horatio Street; thence through, upon and along Thirteenth Street and Horatio Street, with a single track, to Eighth Avenue; thence through, upon and across Eighth Avenue to Thirteenth Street; thence through, upon and along Thirteenth Street, with a double track to Thirteenth Avenue; thence through, upon and along Thirteenth Avenue, with a double track, to Fourteenth Street, being the route described in the resolution of the Common Council of the City of New York, adopted December 24, 1889.

LEXINGTON AVENUE AND PAVONIA FERRY LINE.

Commencing at Forty-second Street, in the City of New York, at a point of connection with the tracks of the Houston, West Street and Pavonia Ferry Railroad Company, at the junction of said street with Lexington Avenue; thence on and over said Lexington Avenue, with double tracks, to Harlem River, with further construction and extensions from the junction of One hundred and sixteenth Street and Lexington Avenue, through One hundred and sixteenth Street to Morningside Park and to the East River, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

COLUMBUS AVENUE AND NINTH AVENUE LINE.

Commencing in Columbus Avenue, in the City of New York, at or near Sixty fourth Street, there to connect with the existing double track of the Ninth Avenue Railroad Company in said avenue; thence running across the surface of the Boulevard and upon, along and over the surface of Columbus Avenue (formerly Ninth Avenue) with double tracks to One hundred and tenth Street; also from Columbus Avenue, with double tracts through and along One

hundred and sixth Street to Amsterdam Avenue, to connect with the existing double track in Amsterdam Avenue (formerly Tenth Avenue), now owned by the Ninth Avenue Railroad Company, being the route described in the resolution of the Common Council of the City of New York, adopted October 10, 1892.

Fort Lee Ferry Extension.

Commencing at the intersection of One hundred and twenty-fifth Street and Amsterdam Avenue (formerly Tenth Avenue), running thence westerly, through One hundred and Twenty-fifth Street to the Boulevard, thence northerly through the Boulevard to One hundred and thirtieth Street and thence westerly, through One hundred and thirtieth Street westerly to Twelfth Avenue, to a point on the west side of said avenue at or near Manhattan Street and at or near Fort Lee Ferry, being the route described in the resolution of the Common Council of the City of New York, adopted December 19, 1893.

Columbus and Ninth Avenue Railroad Connection and Extension on One Hundred and Ninth Street.

Commencing at the intersection of Columbus Avenue at One hundred and ninth Street, and connecting there by suitable curves, switches and appliances with the road of the Columbus and Ninth Avenue Railroad Company, running thence easterly with double tracks, through, upon and along One hundred and Ninth Street to Manhattan Avenue; thence northerly, upon Manhattan Avenue, with double tracks, to the southerly side of Cathedral Parkway (formerly One hundred and tenth Street), there to unite with an extension or branch of the Metropolitan Street Railway Company, being the route described in the resolution of the Common Council of the City of New York, adopted September 18, 1894.

METROPOLITAN STREET RAILWAY CONNECTION AND EXTENSION ON MANHATTAN STREET.

Commencing at the intersection of Manhattan Avenue and One hundred and sixteenth Street, and connecting there by suitable curves, switches and appliances with the road of the Metropolitan Street Railway Company, running thence southerly, with double tracks, through, upon and along Manhattan Avenue to the southerly side of Cathedral Parkway (formerly One hundred and tenth Street), there to unite with an extension or branch of the Columbus and Ninth Avenue Railroad Company, being the route described in the resolution of the Common Council of the City of New York, adopted September 18, 1894.

HOUSTON, WEST STREET AND PAVONIA FERRY CONNECTION AND EXTENSION ON RIDGE STREET AND MONTGOMERY STREET.

Commencing at the intersection of Houston Street and Avenue C in the City of New York, connecting there by suitable curves and appliances with the route of the Houston, West Street and Pavonia Ferry Railroad Company, running thence through, upon and along Houston Street over the single track in said street of the road of the Forty-second Street and Grand Street Ferry Railroad Company to Ridge Street; thence (with suitable curves and appliances at or near Ridge Street) through, upon and along Ridge Street with a single track to the said point of union, and by the construction, maintenance and operation of an extension or branch of the said railroad formerly of the Chambers Street and Grand Street Ferry Railroad Company, commencing at the intersection of Montgomery Street and Madison Street, connecting there by suitable curves and appliances with the said road formerly of the Chambers Street and Grand Street Ferry Railroad Company, running thence with a single track through, upon and along Montgomery Street to

Division Street; thence through, upon and across Division Street to Ridge Street; thence through, upon and along Ridge Street with a single track to the said point of union, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

HOUSTON, WEST STREET AND PAVONIA FERRY RAILROAD CONNECTION AND EXTENSION ON PITT STREET AND GOUVERNEUR STREET.

Commencing at the intersection of Third Street and Avenue C, connecting there by suitable curves and appliances with the tracks of the Houston, West Street and Pavonia Ferry Railroad Company, and running thence with an additional single track through, upon and along Avenue C to and across Houston Street to Pitt Street, there to connect by suitable curves and appliances with the existing single track of the Houston, West Street and Pavonia Ferry Railroad Company in Pitt Street, and running thence through, upon and along Pitt Street over the said single track in said street to Stanton Street; thence (with suitable connections and curves at Stanton Street) upon and across Stanton Street with a single track; thence through, upon and along Pitt street to said point of union; and by the construction, maintenance and operation of an extension or branch of the railroad formerly of the Chambers Street and Grand Street Ferry Railroad Company commencing at the intersection of Gouverneur Street and Madison Street, connecting there by suitable curves and appliances with the said road formerly of the Chambers Street and Grand Street Ferry Railroad Company, running thence, with a single track, through, upon and along Gouverneur Street to and across Grand Street; thence with a single track through, upon and along Pitt Street to said point of union, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Metropolitan Cross-Town Connection and Extension on West Third Street.

Commencing at the intersection of South Fifth Avenue and West Third Street, connecting there by suitable curves and attachments with the road of The Metropolitan Cross-Town Railway Company, and running thence westerly with double tracks through, upon and along West Third Street to a point of union with an extension or branch of the railroad of the Sixth Avenue Railroad Company, at or near Sullivan Street, being the route described in the resolution of the Common Council of the City of New York adopted September 29, 1892.

Metropolitan Cross-Town Connection and Extension on Broome, Sullivan and Watts Streets.

From a connection with the route of The Metropolitan Cross-Town Railway Company on South Fifth Avenue, at the intersection of Broome Street, by suitable curves and appliances thence with double tracks through, upon and along Broome Street to Sullivan Street; thence through upon and along Sullivan Street with double tracks to Watts Street; thence through, upon and along Watts Street with double tracks to a union with the route and road of the Houston, West Street and Pavonia Ferry Railroad Company, now on West Street, and to connect also with Desbrosses Street Ferry, said branch over said streets to said union of the routes or road of The Metropolitan Cross-Town Railway Company when built on South Fifth Avenue to Broome Street, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

METROPOLITAN CROSS-TOWN CONNECTION AND EXTENSION ON SOUTH FIFTH AVENUE.

Commencing at South Fifth Avenue and Spring Street, connecting there by suitable curves and appliances with rhe existing road of The Metropolitan Cross-Town Railway Company, and running thence southerly with double tracks through, upon and along South Fifth Avenue to Broome Street, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

HOUSTON, WEST STREET AND PAVONIA FERRY CONNECTION AND EXTENSION ON LEXINGTON AVENUE.

Along and over Lexington Avenue from Twenty-seventh Street to Thirty-fifth Street by double track, and by single track from Thirty-fifth Street to Thirty-sixth Street, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

METROPOLITAN STREET RAILWAY CONNECTION AND EXTENSION ON WEST BROADWAY.

Commencing at the intersection of West Broadway and Duane Street, and connecting there by suitable curves, switches and appliances with the Metropolitan Street Railway Company's existing tracks in said Duane Street, running thence southerly in or upo West Broadway, with double tracks to Chambers Street, and thence southerly with double tracks, in or upon West Broadway (a portion of which was formerly College Place), to Vesey Street, there to connect with a double track extension or branch of the railroad and route of the Central Park, North and East River Railroad Company, being the route described in the resolution of the Common Council of the City of New York, adopted April 14, 1896.

II.

REAL ESTATE OWNED BY THE METROPOLITAN STREET RAILWAY COMPANY, BEING THE FOLLOWING DESCRIBED PIECES AND PARCELS OF LAND WITH THE BUILDINGS AND IMPROVEMENTS THEREON SITUATE, LYING AND BEING IN THE COUNTY OF NEW YORK, CITY OF NEW YORK AND STATE OF NEW YORK.

A. REAL ESTATE NOT SUBJECT TO THE METROPOLITAN STREET RAILWAY COMPANY'S GENERAL AND COLLATERAL TRUST MORTGAGE.

LEXINGTON AVENUE AND TWENTY-THIRD STREET PROPERTY.

All that certain plot, piece or parcel of land with the buildings thereon erected, situate, lying and being in the City and County of New York, bounded and described as follows: Beginning at a point formed by the intersection of the easterly line of Park (formerly Fourth) Avenue, with the northerly line or side of Thirty-second Street; running thence northerly along the easterly side of Park Avenue, one hundred ninety-seven (197) feet six (6) inches to the southeasterly corner of Park Avenue and Thirty-third Street; thence easterly along the southerly side of Thirty-third Street, four hundred twenty-five (425) feet to the southwesterly corner of Thirty-third Street and Lexington Avenue, thence southerly along the westerly side of Lexington Avenue, one hundred forty-eight (148) feet one (1) inch; thence westerly parallel or nearly so with Thirty-third Street, forty-eight (48) feet four (4) inches; thence southerly and nearly parallel with Lexington Avenue, forty-nine (49) feet five (5) inches to the northerly side of Thirty-second Street, at a point distant forty-eight (48) feet four (4) inches westerly from the westerly side of Lexington Avenue; thence westerly along the northerly side of Thirty-second Street, three hundred seventy-six (376) feet

eight (8) inches to the point or place of beginning; being the same premises heretofore conveyed to The New York and Harlem Railroad Company by the following instruments, to wit: Deed from Mary Murray, dated January 8, 1849, and recorded in the Office of the Register of the County of New York in Liber 518 of Conveyances, page 420; deed from Nathan Jackson and wife, dated February 22, 1849, and recorded in said Register's Office in Liber 558 of Conveyances, page 215; deed from John Alstyne, dated December 13, 1851, and recorded in said Register's Office in Liber 590 of Conveyances, page 226; deed from Henry Abell and wife, dated September 1, 1865, and recorded in said Register's Office, in Liber 947 of Conveyances, page 251; deed from Jesse A. Marshall and wife, John F. Marshall and William H. Wilkins and wife, dated June 1, 1875, and recorded in said Register's Office in Liber 1333 of Conveyances, page 51; deed from Peter S. Bogart and wife, dated December 10, 1849, and recorded in said Register's Office in Liber 537 of Conveyances, page 447, and which premises were conveyed by The New York and Harlem Railroad Company to Oren Root, Junior, by deed bearing date September 6, 1899, and recorded in the office of the Register of the County of New York on September 11, 1899, in Block Series (Conveyances, Section 3, Liber 65, page 136, and indexed under Block Number 888, and Section 5, Liber 63, page 307, and indexed under Block Number 1497, and were conveyed by Oren Root, Jr., to the Railway Company by indenture dated September 22, 1899, subject to a mortgage made by the said Root to the Mutual Life Insurance Company, dated September 20, 1899, to secure the payment of the sum of $950,000 and interest.

85TH AND 86TH STREETS AND MADISON AVENUE PROPERTY.

Also, all those certain lots, pieces or parcels of land, with the buildings and improvements thereon, situate, lying and being in the City and County of New York,

bounded and described as follows: Beginning at a point formed by the intersection of the northerly side of Eighty-fifth Street and the westerly side of Madison Avenue, and running thence westerly along the northerly side of said Eighty-fifth Street, two hundred twenty (220) feet; thence northerly parallel with Madison Avenue two hundred four (204) feet four (4) inches, to the southerly side of Eighty-sixth Street; thence easterly along the southerly side of Eighty-sixth Street, two hundred twenty (220) feet to the southwesterly corner of Eighty-sixth Street and Madison Avenue; and thence southerly along the westerly side of Madison Avenue two hundred four (204) feet four (4) inches to the point or place of beginning; being the same premises heretofore conveyed to The New York and Harlem Railroad Company by the following instruments, to wit: Deed from Webster Wagner and wife, dated November 5, 1881, and recorded in the office of the Register of the County of New York, in Liber 1923 of Conveyances, page 203; deed from George B. Heath, dated December 3, 1886, and recorded in said Register's Office, in Liber 1998 of Conveyances, page 468; deed from Clark R. Gavit, dated December 22, 1885, and recorded in said Register's Office in Liber 2273 of Conveyances, page 333; deed from Webster Wagner and wife, dated November 12, 1881, and recorded in said Register's Office, in Liber 1912 of Conveyances, page 342; deed from Warren S. Crane, dated November 21, 1889, and recorded in said Register's Office, in Liber 2273 of Conveyances, page 331, and deed from James M. Gotendorf and others, dated August 12, 1885, and recorded in said Register's Office, in Liber 1912 of Conveyances, page 347; and which premises were conveyed by The New York and Harlem Railroad Company to Oren Root, Junior, by deed bearing date September 6, 1899, and recorded in the office of the Register of the County of New York on September 11, 1899, in Block Series (Conveyances), Section 6, Liber 65, page 136, and indexed under Block Number 888, and Section 5, Liber 63, page 307,

and indexed under Block Number 1497, and were conveyed by Oren Root, Jr., to the Metropolitan Street Railway Company by indenture dated September 22, 1899, subject to a mortgage made by the said Root to the Mutual Life Insurance Company dated September 20, 1899, to secure the payment of the sum of $950,000, and interest.

146TH STREET, 147TH STREET, LENOX AVENUE AND 7TH AVENUE PROPERTY.

All that certain lot, piece or parcel of land situate, lying and being in the Twelfth Ward in the City of New York, bounded and described as follows: Beginning at a point on the westerly side of Lenox Avenue (formerly Sixth Avenue) at a point distant one hundred (100) feet north of the corner formed by the intersection of the northerly side of One hundred and Forty-sixth Street with the westerly side of Lenox Avenue, running thence northerly along the westerly side of said Lenox Avenue to the corner formed by the intersection of the westerly side of Lenox Avenue and the southerly side of One hundred and forty-seventh Street, running thence westerly along the southerly side of One hundred and forty-seventh Street, to the corner formed by the intersection of the southerly side of One hundred and forty-seventh Street with the easterly side of Seventh Avenue, running thence southerly along the easterly side of said Seventh Avenue to the corner formed by the intersection of the easterly side of Seventh Avenue with the northerly side of One hundred and forty-sixth Street, running thence easterly along the northerly side of One hundred and forty-sixth Street to a point distant four hundred forty (440) feet westerly from the corner formed by the intersection of the northerly side of One hundred and Forty-sixth Street with the westerly side of Lenox Avenue, (formerly Sixth Avenue), thence running northerly and parallel with the westerly side of Lenox Avenue aforesaid one hun-

dred (100) feet, thence running eastwardly and parallel with the northerly side of One hundred and forty-sixth Street four hundred forty (440) feet to the point or place of beginning; conveyed by indenture dated September 30, 1897, from The Metropolitan Traction Company of New York to the Railway Company and which indenture was recorded in the Office of the Register of the City and County of New York, on October 4, 1897, in Block Series (Conveyances) Section 7, Liber 48, page 99, and indexed under Block Number 2015 on the Land Map of the City of New York, and being part of the land which was conveyed to the Metropolitan Traction Company of New York by Charles D. Lane and Rosa G., his wife, by deed dated July 1, 1894, and recorded in the office of the Register of the City and County of New York on July 27, 1894, in Block Series (Conveyances) Section 7, Liber 22, page 384, and indexed under Block Number 2015 on the land map of the City of New York, and being subject to a mortgage of $150,000, with 5 per cent. per annum given by John D. Crimmins to the Mutual Life Insurance Company, dated February 20, 1893, and recorded in the office of the Register of the City and County of New York on February 20, 1893, in Block Series (Mortgages), section 7, Liber 23, page 301, and being also subject to the restrictions and covenants contained in a certain grant of the Mayor, Aldermen and Commonalty of the City of New York to Mary G. Pinckney, dated November 7, 1867, and recorded in the Register's Office of the City and County of New York, on November 15, 1868, in Liber 1041 of Conveyances, page 1, in so far as the same affects the said described premises.

Also that certain lot, piece or parcel of ground with the buildings thereon erected, situate, lying and being in the Twelfth Ward of the City of New York and bounded and described as follows: Commencing at the intersection of the northerly side of One hundred and forty-sixth Street with the westerly side of Lenox Avenue (Formerly Sixth Avenue), running thence

northerly along the westerly side of Lenox Avenue one hundred (100) feet or thereabouts; running thence westerly and parallel with the northerly side of One hundred and forty-sixth Street four hundred and forty (440) feet or thereabouts; running thence southerly and parallel with the westerly side of Lenox Avenue one hundred (100) feet to the northerly side of One hundred and forty-sixth Street; and thence easterly along the northerly side of One hundred and forty-sixth Street four hundred forty (440) feet or thereabouts to the point or place of beginning being a portion of the premises heretofore conveyed to The Metropolitan Traction Company of New York by Charles D. Lane and Rosa G., his wife, by deed dated July 1, 1894, and recorded in the Office of the Register of the City and County of New York in Block Series (Conveyances), Section 7, Liber 22, page 384, and indexed under Block Number 2015, and which premises were conveyed to the Metropolitan Street Railway Company by The Metropolitan Traction Company of New York by deed dated July 2, 1897, and recorded in said Register's Office on July 20, 1897, in Block Series (Conveyances), Section 7, Liber 47, page 241, and indexed under Block Number 2015; subject, however, to a mortgage made by Charles D. Lane and Rosa G., his wife, to John D. Crimmins, and recorded in Block Series (Mortgages), Section 7, Liber 38, page 298, and also subject to the restrictions and covenants contained in a certain grant from the Mayor, Aldermen and Commonalty of the City of New York to Mary G. Pinckney, dated November 7, 1867, and recorded on November 15, 1867, in the Office of the Register of the City and County of New York in Liber 1041 of Conveyances, page 1, in so far as the same affects the said described premises; provided, however, that the property described under the heading "146th, 147th Street, Lenox Avenue and 7th Avenue property" is subject to the right, title and interest therein of the Sixth Avenue Railroad Company.

DRY DOCK STREET PROPERTY.

All that certain lot, piece or parcel of land, with the building thereon erected, situate, lying and being in the Eleventh Ward in the City of New York, bounded and described as follows: Beginning at a point on the westerly side of Dry Dock Street at the middle of the party wall distant southerly from the point or angle formed by the intersection of the westerly line of Dry Dock Street and the southerly line of Eleventh Street, ninety-four (94) feet nine and one-half (9½) inches or thereabouts running thence westerly parallel or nearly so with Eleventh Street and part of the way through a party wall eighty-four (84) feet, thence northerly and parallel or nearly so with Dry Dock Street twenty-two (22) feet, thence easterly parallel or nearly so with Eleventh Street eighty-four (84) feet to the westerly line of Dry Dock Street, thence southerly along the westerly line of Dry Dock Street twenty-two (22) feet to the point or place of beginning; be the said dimensions more or less. Being the same premises conveyed to The Metropolitan Traction Company of New York by Joseph Brannagan, by deed dated November 23, 1892, and recorded in the office of the Register of the City and County of New York on November 23, 1892, in Block Series (Conveyances) Section 2, Liber 14, page 444, and indexed under Block Number 380, and which were conveyed by The Metropolitan Traction Company of New York to the Metropolitan Street Railway Company by indenture dated September 15, 1897, and recorded in the office of the Register of the City and County of New York on September 28, 1897, in Block Series (Conveyances) Section 2, Liber 56, page 229, and indexed under Block Number 380.

FRONT STREET PROPERTY.

All those three certain lots, pieces or parcels of land, with the buildings and improvements erected thereon,

situate, lying and being in the City of New York, and known as Numbers 13, 15 and 17 Front Street, which, taken together, according to a survey thereof made August, 1883, are bounded and described as follows: Beginning at the northeasterly corner thereof at a point in the southerly line or side of Front Street opposite the middle of a party wall and distant thirty-two (32) feet seven (7) inches westerly from the southwesterly corner of Front and Broad Streets, and running thence southwardly parallel or nearly so with Broad Street and along the middle of said party wall, one hundred five (105) feet one (1) inch to a point opposite a fence; thence westwardly along said fence and parallel or nearly so with Front Street eighteen (18) feet nine (9) inches to an angle in said fence; thence in a northwesterly direction and along said fence to another angle therein five (5) feet; thence again westwardly parallel or nearly so with Front Street and along said fence, the brick wall of a five-story building and another fence thirty-seven (37) feet four and one-half (4½) inches to the wall of a five-story brick building; thence northwardly and along said wall to an angle therein twenty (20) feet; thence again westwardly along said wall three (3) feet six (6) inches to the middle of a party wall; thence northwardly along the middle of said party wall and parallel or nearly so with Moore Street seventy-nine (79) feet ten (10) inches to the southerly side of Front Street, and thence eastwardly along said southerly side of Front Street, sixty-five (65) feet one half (½) inch to the point or place of beginning; that portion which is known as Number 13 Front Street being subject to an agreement made by Mulford Martin with Elias H. Herrick, dated May 28, 1840. Being the same property which was conveyed to The Metropolitan Traction Company of New York by John D. Crimmins by deed dated September 29, 1892, and recorded in the office of the Register of the City and County of New York on November, 29, 1892, in Block Series (Conveyances), Section 1, Liber 10, page 472, and indexed

under Block Number 4, and which was conveyed to the Metropolitan Street Railway Company by deed dated September 11, 1896, and recorded in said Register's Office on September 28, 1897, in Block Series (Conveyances), Section 1, Liber 43, page 361, and indexed under Block Number 4.

NINTH AVENUE PROPERTY.

All those forty certain lots and parts of lots or gores of land, situate, lying and being in the City of New York, in the Twenty-second Ward of said city, which, taken together as one parcel, are bounded and described as follows, viz: Beginning at a point on the easterly side of line of Ninth Avenue which is distant sixty-five (65) feet northerly from the northerly line of Fifty-third Street; running thence northerly along said easterly line of Ninth Avenue one hundred thirty-five (135) feet ten (10) inches, to the southerly line of Fifty-fourth Street; thence easterly along said southerly line of Fifty-fourth Street, five hundred twenty five (525) feet and to point distant two hundred seventy-five (275) feet westerly from the point of intersection of the southerly line of Fifty-fourth Street with the westerly line of Eighth Avenue; thence southerly on a line at right angles with the said southerly line of Fifty-fourth Street one hundred sixty-five (165) feet eleven and three-eighths (11 3/8) inches; thence in a northwesterly direction eighty-one (81) feet two (2) inches, to a point distant thirty-eight (38) feet two (2) inches, north of Fifty-third Street; thence westerly eighty-two (82) feet to a point forty-nine (49) feet north of Fifty-third Street; thence westerly one hundred twenty nine (129) feet one (1) inch to a point distant fifty-two (52) feet north of Fifty-third Street; thence westerly one hundred forty-one (141) feet to a point distant fifty-one (51) feet eight inches (8) north of Fifty-third Street; thence westerly sixty-one (61) feet five (5) inches, to a point distant fifty-six (56) feet five (5) inches, north of Fifty-

third Street; thence westerly thirty-one (31) feet four (4) inches to the easterly line of Ninth Avenue at the point or place of beginning; together with all the buildings and erections now existing thereon; being part of the premises conveyed to John D. Crimmins by the Eighth Avenue Railroad Company, a corporation created and existing under the laws of the State of New York, by deed dated July 19, 1892, and recorded in the Office of the Register of the City and County of New York on August 3, 1892, in Block Series (Conveyances) Section 4, Liber 17, page 78; and by said John D. Crimmins conveyed to The Metropolitan Traction Company of New York by deed dated September 29, 1892, and recorded in said Register's Office on September, 29, 1892, in Block Series (Conveyances) Section 4, Liber 18, page 138, and indexed under Block Numbers 1044 and 1045; and by said Metropolitan Traction Company to the Metropolitan Street Railway Company by deed dated September, 11, 1896, and recorded in the office of the Register of the City and County of New York, on September 28, 1897, in Block Series (Conveyances), Section 4, Liber 62, page 11, and indexed under Block Numbers 1044 and 1045 on the Land Map of the City of New York; subject to a certain mortgage dated July 19, 1892, made by John D. Crimmins to The Eighth Avenue Railroad Company, to secure the payment of the sum of Two hundred and fifty thousand dollars ($250,000) and interest, on which $50,000 has been paid.

FIFTY-THIRD STREET PROPERTY.

All that certain gore, lot, piece or parcel of land with the building thereon situate, lying and being on the northerly side of Fifty-third Street in the City of New York, in the Twenty-second Ward of said City, and bounded and described as follows: Beginning at a point on the northerly side of Fifty-third Street at a point distant

four hundred thirty four (434) feet eleven (11) inches easterly from the corner formed by the intersection of the easterly side of Ninth Avenue with the northerly side of Fifty-third street; running thence northerly and parallel with Ninth Avenue thirty-nine (39) feet three and one half (3½) inches or thereabouts to the southerly line of lands formerly of Jacob Harsen; thence easterly along the said line of lands formerly of Jacob Harsen, twenty-five (25) feet or thereabouts, thence southerly and again parallel with Ninth Avenue thirty-seven (37) feet five and one-eighth (5⅛) inches or thereabouts to the northerly side of Fifty-third Street, and thence westerly along said northerly side of Fifty-third Street twenty-five feet (25) to the point or place of beginning. Being the same premises conveyed to John D. Crimmins by Margaret F. Miller by deed dated August 3, 1892, and recorded in the office of the Register of the City and County of New York on August 3, 1892, in Block Series (Conveyances) Section 4, Liber 17, page 87, and by the said John D. Crimmins conveyed to The Metropolitan Traction Company of New York by deed dated September 29, 1892, and recorded in the Office of the Register of the City and County of New York on September 29, 1892, in Block Series (Conveyances) Section 4, Liber 18, page 135 and indexed under Block Number 1044 and by said The Metropolitan Traction Company of New York conveyed to the Metropolitan Street Railway Company by deed dated September 15, 1897, and recorded in said Register's office on September 28, 1897, in Block Series (Conveyances) Section 4, Liber 62, Page 9, and indexed under block number 1044.

Also all those certain gore lots, pieces or parcels of land, with the improvements thereon, situate, lying and being in the Twenty-second Ward of the City of New York and bounded and described as follows: Beginning at a point on the northerly side of Fifty-third Street distant two hundred and seventy-five (275) feet westerly from the corner formed by the intersection of the westerly side of Eighth Avenue, with the North-

erly side of Fifty-third Street and running thence westerly along said northerly side of Fifty-third Street sixty-five (65) feet one (1) inch to the Easterly line of a gore lot conveyed to the Metropolitan Street Railway Company by the Metropolitan Traction Company of New York by deed dated September 15, 1897; thence northerly along said easterly line of said gore lot thirty-seven (37) feet five and one eighth (5⅛) inches or thereabouts to the southerly line of lands formerly of Jacob Harsen, deceased; thence easterly along said line of lands of Jacob Harsen, deceased sixty-five (65) feet one (1) inch or thereabouts to a point distant two hundred seventy-five (275) feet westerly from Eighth Avenue; and thence southerly on a line parallel with Eighth Avenue thirty-four (34) feet ten and five eighths (10⅝) inches to the northerly side of Fifty Third Street to the point or place of beginning. Also, all those certain gore lots, pieces or parcels of land, with the improvements thereon, situate, lying and being in the Twenty-second Ward of the City of New York and bounded and described as follows: Beginning at a point on the northerly side of Fifty-third Street distant four hundred nine (409) feet eleven inches (11) from the corner formed by the intersection of the easterly side of Ninth Avenue with the northerly side of Fifty-third Street; running thence northerly forty-two (42) feet two (2) inches or thereabouts to the southerly line of lands formerly of Jacob Harsen, deceased; thence easterly along said line of lands of Jacob Harsen, deceased, twenty-five (25) feet to the westerly line of a gore lot conveyed to the Metropolitan Street Railway Company by The Metropolitan Traction Company of New York by deed dated September 15, 1897; thence southerly along said westerly line of said gore lot and parallel with Ninth Avenue thirty-nine (39) feet and three and one half inches (3½) or thereabouts to the northerly side of Fifty-third Street at a point distant three hundred and sixty-five (365) feet one (1) inch westerly from the corner formed by the intersection of the

westerly side of Eighth Avenue with the Northerly side of Fifty-third Street, and thence westerly along said northerly side of Fifty-third Street twenty-five (25) feet to the point or place of beginning; being the premises conveyed to the Metropolitan Street Railway Company by The Metropolitan Traction Company of New York by deed dated September 15, 1897, and recorded in the Office of the Register of the City and County of New York on September 28, 1897, in Block Series (Conveyances) Section 4, Liber 62, page 6, and indexed under Block Number 1044.

TWENTY-THIRD STREET LEASEHOLD.

All those certain lots, pieces and parcels of land in the Sixteenth ward of the City of New York which, taken together, are bounded and described as follows: Beginning at the intersection of the northerly side of West Twenty-third Street with the westerly side of Eleventh Avenue; thence running northerly and parallel with Eleventh Avenue ninety-eight (98) feet nine (9) inches or thereabouts to the half distance line between Twenty-third Street and Twenty-fourth Street; thence westerly and along said half distance line four hundred fifty-two (452) feet seven and one-half (7½) inches or thereabouts to the easterly line of Thirteenth Avenue; thence southeasterly and parallel with Thirteenth Avenue one hundred one (101) feet four (4) inches or thereabouts to a point formed by the intersection of the easterly line of Thirteenth Avenue with the northerly line of Twenty-third Street; thence easterly and parallel with Twenty-third Street four hundred thirty (430) feet or thereabouts to the point or place of beginning.

B. Real estate subject to the Metropolitan Street Railway Company's general and Collateral trust Mortgage.

Ninety-sixth Street and First Avenue Property.

All that certain block, piece or parcel of land with the buildings and improvements thereon, situate, lying and being in the Twelfth Ward of the City of New York and bounded and described as follows, viz.: Northerly by the middle line of Ninety-sixth Street; southerly by the middle line of Ninety-fifth Street; westerly by the middle line of First Avenue, and easterly, by the East or Harlem River. And also the land under water, and all preemptive rights in, upon and under the East or Harlem River, lying in front of the above described block; being the premises conveyed by Daniel B. Hasbrouck and Sarah Hasbrouck, his wife, to the Metropolitan Street Railway Company, by deed dated April 7, 1897, and recorded in the Office of the Register of the City and County of New York, in Block Series (Conveyances), Section 5, Liber 49, page 25, and indexed under Block Number 1575.

Avenue C Depot Property.

All those two certain lots, pieces or parcels of lands, with the buildings and improvements thereon, situate in the Eleventh Ward of the City of New York, and which taken together are bounded and described as follows: Beginning on the northerly line or side of Eleventh Street, distant one hundred eighty-three (183) feet easterly from the corner formed by the intersection of the northerly side of Eleventh Street with the easterly side of Avenue C, as the same is now laid out and widened, which said widening was not noted or allowed for on the map hereinafter mentioned, and running thence northerly and parallel with Avenue C one hundred three (103) feet three (3)

inches to the centre line of the block between Eleventh Street and Twelfth Street; thence easterly along said centre line of the block and parallel with Eleventh Street fifty (50) feet; thence southerly and parallel with Avenue C one hundred three (103) feet three (3) inches to the northerly side or line of Eleventh Street, and thence westerly along the same fifty (50) feet to the point or place of beginning.

All that certain lot, piece or parcel of land with the buildings thereon erected, situate, lying and being in the Eleventh Ward in the City of New York, and bounded and described as follows: Beginning at a point on the northerly side of Tenth Street, distant two hundred thirty-three (233) feet easterly from the northeasterly corner of Tenth Street and Avenue C, and thence northerly and parallel with Avenue C eighty (80) feet to the point or place of beginning, running northerly from that point and parallel with Avenue C fourteen (14) feet nine (9) inches; thence easterly and parallel with Tenth Street twenty-five (25) feet; thence southerly and again parallel with Avenue C fourteen (14) feet nine (9) inches; thence westerly and again parallel with Tenth Street, Twenty-five (25) feet, to the point or place of beginning.

All that certain piece of land, with the buildings thereon situate, lying and being in the Eleventh Ward of the City of New York on the northerly side of Tenth Street and beginning at a point two hundred eight (208) feet distant easterly from the northeasterly corner of Tenth Street and Avenue C, and running thence easterly along the northerly side of Tenth Street twenty-five feet (25) thence northerly on a line parallel with Avenue C ninety-four (94) feet nine and one-half (9½) inches, to the centre line of the block between Tenth Street and Eleventh Street; thence westerly on a line parallel with Tenth Street twenty-five (25) feet; thence southerly on a line parallel with Avenue C ninety-four (94) feet nine and one-half (9½) inches, to Tenth Street, aforesaid, the place of beginning.

Also, six other lots, pieces and parcels of ground and premises, with the buildings thereon, situate, lying and being in the Eleventh Ward of the City of New York and bounded and described as follows: Beginning at a point on the southerly side of Eleventh Street distant one hundred eight (108) feet easterly from the southeasterly corner of Avenue C and Eleventh Street; and running thence easterly and along the southerly side of Eleventh Street seventy-five (75) feet; thence southerly and parallel with Avenue C one hundred eighty-nine (189) feet seven (7) inches, more or less, to the northerly side of Tenth Street; thence westerly and along the northerly side of Tenth Street seventy-five (75) feet, and thence northerly and parallel with the Avenue C one hundred eighty-nine (189) feet seven (7) inches, more or less, to the place of beginning.

All those two certain lots, pieces or parcels of land, with the buildings thereon, situate, lying and being on the northerly side of Eleventh Street, in the Eleventh Ward of the City of New York, and known and distinguished on a certain map filed by Frederick De-Puyster, Master in Chancery in the office of the Register of the City and County of New York, entitled "map of two hundred and forty lots of land situate at Burnt Mill Point in the Eleventh Ward of the City of New York," by the numbers Eighty-five (85) and Eighty-six (86) and more fully bounded and described as follows: Beginning at a point on the northerly side of Eleventh Street in said city, distant two hundred thirty-three feet (233) easterly from the northeasterly corner of Avenue C and Eleventh Street, running thence northerly and parallel with Avenue C one hundred three (103) feet three (3) inches; thence easterly and parallel with Eleventh Street fifty (50) feet; thence southerly and parallel with Avenue C one hundred three (103) feet three (3) inches to Eleventh Street, and thence westerly along Eleventh Street fifty (50) feet to the place of beginning. Also, all those four certain lots, pieces or parcels of land situate, lying and being

in the Eleventh Ward of the City of New York, bounded and described as follows: Beginning at a point on the southerly side of Eleventh Street distant one hundred eighty-three (183) feet easterly from the easterly line of Avenue C, running thence southerly and parallel with Avenue C ninety-four (94) feet nine (9) inches to the centre line of the block, running thence easterly alone said centre line one hundred (100) feet; thence northerly and parallel with Avenue C ninety-four (94) feet nine (9) inches to the southerly line or side of Eleventh Street; thence westerly along the southerly line of Eleventh Street one hundred (100) feet to the place of beginning;

No. 413 East Tenth Street Property.

All that certain lot, piece or parcel of ground, with the building thereon erected, which on a certain map filed by Frederick De Puyster, Master in Chancery (with his certificate endorsed thereon, dated February 1, 1837) in the office of the Register of the City and County of New York, entitled "Map of 240 lots of lands situated at Burnt Mill Point in the Eleventh Ward of the City of New York," consisting of one lot of land thereon designated by the number "144" (one hundred and forty-four), bounded as follows, viz: Commencing at a point on the northerly side of Tenth Street, distant one hundred and ninety-three (193) feet southeasterly from the northeasterly corner of Avenue C and Tenth Street; running thence northeasterly along lot 145 on said map ninety-four (94) feet nine (9) inches to the centre of the block; thence southeasterly along the centre of the block twenty-five (25) feet to lot 143 on said map; thence southwesterly along said lot 143 ninety-four (94) feet nine (9) inches to Tenth Street, and thence northwesterly along Tenth Street twenty-five (25) feet to the point of beginning.

LENOX AVENUE AND ONE HUNDRED AND SIXTEENTH STREET PROPERTY.

All those certain lots, pieces or parcels of land situate, lying and being in the Twelfth Ward of the City of New York, and which taken together are bounded and described as follows: Commencing at the corner formed by the intersection of the northerly line of One hundred and sixteenth Street with the westerly side of Lenox Avenue (formerly Sixth Avenue), running thence northerly along said westerly line of Lenox Avenue two hundred one (201) feet ten (10) inches to the southerly line of One hundred and seventeenth Street; thence westerly along said southerly line of One hundred and seventeenth Street two hundred (200) feet; thence southerly and parallel with Lenox Avenue Two hundred one (201) feet ten (10) inches to the northerly line of One hundred and sixteenth Street; thence easterly along said northerly line of One hundred and sixteenth Street two hundred (200) feet to the point or place of beginning. Being the same premises conveyed by The Metropolitan Traction Company of New York to the Lexington Avenue and Pavonia Ferry Railroad Company by deed dated January 15, 1894, and recorded in the office of the Register of the City and County of New York in Block Series (Conveyances) Section 7, Liber 20, at page 456 and indexed under Block Number 1901, subject, however, to the existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

LEXINGTON AVENUE AND NINETY-NINTH STREET PROPERTY.

All that certain lot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of New York, and bounded and described as follows: Beginning at the northeasterly corner of Fourth Avenue and Ninety-ninth Street, running thence northwardly along the easterly line of Fourth Avenue two hundred one (201) feet ten (10) inches to the southerly

line of One hundredth Street; thence eastwardly along the southerly line of One hundredth Street four hundred five (405) feet; thence southwardly and parallel with Fourth Avenue two hundred one (201) feet ten (10) inches to the northerly line of Ninety-ninth Street; and thence westwardly along the northerly line of Ninety-ninth Street four hundred five (405) feet to the point or place of beginning. Being the same premises conveyed by The Metropolitan Traction Company of New York to the Lexington Avenue and Pavonia Ferry Railroad Company by deed dated January 15, 1894, and recorded in the office of the Register of the City and County of New York, in Block Series (Conveyances), Section 6, Liber 22, page 157, and indexed under Block Number 1627. Subject, however, to the existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

LEXINGTON BUILDING.

All those certain lots, pieces or parcels of land with the building or buildings thereon erected, situate, lying and being in the Twelfth Ward of the City of New York, bounded and described as follows: Commencing on the northerly side of Twenty-fifth Street, at a point distant one hundred seven (107) feet six (6) inches westerly from the corner formed by the intersection of the northerly line of Twenty-fifth Street with the westerly line of Third Avenue, and running thence westerly along the northerly line of Twenty-fifth Street, one hundred eighty-seven (187) feet six (6) inches or thereabouts, and thence running northerly and parallel, or nearly so, with Third Avenue one hundred ninety-seven (197) feet five (5) inches to the southerly side of Twenty-sixth Street and thence running easterly along the southerly side of Twenty-sixth Street one hundred eighty-six (186) feet, or thereabouts, and thence running southerly and parallel with Third Avenue ninety-eight feet nine (9) inches to the centre line of the block between Twenty-fifth and

Twenty-sixth Streets, and thence running easterly along the said centre line of the block one (1) foot six (6) inches, thence running southerly and parallel with Third Avenue, ninety-eight (98) feet nine (9) inches to the northerly line of Twenty-fifth Street, being the same premises which were heretofore conveyed by the following conveyances, viz:

Deed of Ruth A. Brown to the Metropolitan Traction Company of New York, dated May 31, 1894, and recorded in the Office of the Register of the City and County of New York on June 4, 1894, in Block Series (Conveyances) Section 3, Liber 30, page 128 and indexed under Block Number 881. Deeds of John D. Crimmins to The Metropolitan Traction Company of New York, dated respectively July 13, 1893, February 21, 1894, and August 31, 1894, and respectively recorded in said Register's Office on July 24, 1893, March 5, 1894, and October 18, 1894, in Block Series (Conveyances) Section 3, Liber 21, page 408, Liber 26, page 113 and Liber 31, page 57 and all indexed under Block Number 881. Deed of Alonzo C. Munson to The Metropolitan Traction Company of New York, dated June 15, 1894, and recorded in said Register's Office on June 18, 1894, in Block Series (Conveyances) Section 3, Liber 29, page 176 and indexed under Block Number 881.

Subject, however, to an existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

Belt Line Repair Shops.

All that certain lot, piece or parcel of land, together with the buildings and improvements thereon lying and being in the Twenty-Second Ward of the City of New York, situate on the north side of West fifty-third Street between Tenth and Eleventh Avenues, and known as lot number 768 on a certain map of John Hopper's Estate, filed in the Register's Office of the City of New York on December 31, 1864, as Map No.

660 and being bounded and described as follows: Beginning at a point on the northerly side of Fifty-third Street distant four hundred seventy-five (475) feet westwardly from the westerly side of Tenth Avenue, and running thence westwardly along said northerly side of Fifty-third Street twenty-five (25) feet; thence northerly on a line parallel with Tenth Avenue forty-eight (48) feet three and three-quarters (3¾) inches, thence southwesterly twenty-five (25) feet or thereabouts to a point on a line distant forty-four (44) feet ten (10) inches northerly from the northerly side of Fifty-third Street, and thence southerly on a line parallel with Tenth Avenue forty-four (44) feet ten (10) inches to the northerly side of Fifty-Third Street to the point or place of beginning. Being the same premises conveyed to The Metropolitan Traction Company of New York by Bertha Volkenning by deed dated March 30,1893, and recorded in the office of the Register of the City and County of New York on March 30, 1893, in Block Series (Conveyances) Section 4, Liber 21, page 283.

And also all those certain lots, pieces or parcels of land, together with the buildings and improvements erected thereon, situate, lying and being in the Twenty-second Ward of the City of New York and bounded and described as follows: Beginning at a point three hundred (300) feet easterly from the southeasterly corner of Eleventh Avenue and Fifty-fourth Street; thence easterly along the line of Fifty-fourth Street twenty-five (25) feet; thence southerly parallel with Eleventh Avenue, through the centre of the block to the line of property now or formerly owned by Garrit H. Striker one hundred fifty-six (156) feet; thence northwesterly along the line of said property twenty-five (25) feet three and one-quarter (3¼) inches; thence northerly parallel to Eleventh Avenue one hundred fifty-two (152) feet six and one quarter (6¼) inches, to the point or place of beginning, be the said several dimensions more or less. Being the same premises conveyed by Andrew Doerrschuck and Annie, his wife,

to The Metropolitan Traction Company, of New York, by deed dated March 6, 1893, and recorded in the Office of the Register of the City and County of New York on March 8, 1893, in Block Series (Conveyances) Section 4, Liber 20, page 296 and indexed under Block Number 1082.

Chambers Street Leasehold.

All the leasehold rights of the Metropolitan Street Railway Company in and to all that certain lot, piece or parcel of land situate, lying and being in the Seventh Ward of the City of New York, bounded and described as follows: Beginning at the corner formed by the intersection of the southerly line of Cherry Street with the westerly line of East Street, and running thence southerly along the westerly line of East Street one hundred (100) feet three (3) inches; thence westerly on a line parallel or nearly so with the southerly line of Cherry Street two hundred forty-five (245) feet six (6) inches; thence northerly on a line parallel or nearly so with the westerly line of East Street twenty-six (26) feet one (1) inch; thence easterly parallel or nearly so with said line of Cherry Street nineteen (19) feet eleven (11) inches; thence northerly parallel or nearly so with the said line of East Street seventy-five (75) feet to the said line of Cherry Street; thence easterly along said last mentioned line two hundred twenty-five (225) feet to the place of beginning, and known by the Street Number 505 Cherry Street. Also all the leasehold rights of the Metropolitan Street Railway Company in and to all that certain lot, piece or parcel of land situate, lying and being on Cherry Street in said City immediately adjoining the above described premises on the westerly side thereof, which said lot is about twenty (20) feet in width in front and rear and seventy-five (75) feet in depth on each side.

TWENTY-FOURTH STREET LEASEHOLD.

All the leasehold rights of the Metropolitan Street Railway Company in and to all those ten certain lots of ground, situate, lying and being in the Sixteenth Ward of the City of New York, distinguished on a map of certain lands of Clement C. Moore, situate at Greenwich, in the City of New York, recorded in the Office of the Register of the City and County of New York, in Liber 634 of Conveyances, page 411, by the numbers 905 (nine hundred and five) to (nine hundred and eight) 908 and 936 (nine hundred and thirty-six) to 941 (nine hundred and forty-one) all inclusive; and bounded together as follows, viz: Southeastwardly in front by Eleventh Avenue; southwestwardly by the half distance line between Twenty-third Street and Twenty-fourth Street, northwestwardly by lot numbered on the said map 935 (nine-hundred and thirty-five) and northeastwardly by the said Twenty-fourth Street. Containing together in width along the said Eleventh Avenue and on the northwestwardly side thereof, ninety-eight (98) feet eight (8) inches, and on the northeastwardly and southwestwardly sides thereof, two hundred twenty-five (225) feet be the said several measurements more or less.

III.

STREET SURFACE RAILROADS AND RAILROAD ROUTES IN THE COUNTY OF NEW YORK, CITY OF NEW YORK, AND STATE OF NEW YORK, OPERATED BY THE METROPOLITAN STREET RAILWAY COMPANY AS LESSEE, UNDER THE LEASES HEREINAFTER MENTIONED:

LINES LEASED TO AND OPERATED BY METROPOLITAN STREET RAILWAY COMPANY.

Lease of the Bleecker Street and Fulton Ferry Railroad Company to the Twenty-third Street Railway Company.

Dated January 10, 1876, by which all the railroads and railroad routes of the lessor in the City of New

York are leased to the lessee for the term of ninety-nine years, said lease including the railroad operated along the streets described as follows: Commencing at Twenty-third Street and Eleventh Avenue, running along Eleventh Avenue to Fourteenth Street to Fourth Avenue; and also commencing at the intersection of Fourteenth Street and Hudson Street and thence running southerly and easterly through the city upon various streets, to Fulton Ferry.

Lease of The Broadway and Seventh Avenue Railroad Company to The Houston, West Street and Pavonia Ferry Railroad Company.

Dated May 13, 1890, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor and any extensions of said charter, said lease including the railroad operated along the streets, described as follows: Commencing at Fifty-ninth Street and Seventh Avenue; running thence through and along Seventh Avenue to Broadway; thence through and along Broadway to Fifteenth Street; and thence through and along University Place and certain other streets to Barclay Street; and thence through Barclay Street and Park Place to Broadway; and through Seventh Avenue, from Broadway to Greenwich Avenue to Macdougal Street to West Fourth Street, and through Thompson and Sullivan Streets to West Broadway; and also from Broadway and Twenty-third Street, through Twenty-third Street to Lexington Avenue, thence through Lexington Avenue to Twenty-seventh Street.

Lease of the Central Park, North and East River Railroad Company to The Metropolitan Cross-Town Railway Company and the Houston, West Street and Pavonia Ferry Railroad Company.

Dated October 14, 1892, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of

the charter of the lessor and any extensions of said charter, said lease including the railroad operated along the streets described as follows: From Tenth Avenue and Fifty-ninth Street through Tenth Avenue, West Street and other streets to the South Ferry; and also from Tenth Avenue at Fifty-ninth Street along Fifty-ninth Street to First Avenue; and thence through various other streets and avenues to the said South Ferry.

Lease of the Eighth Avenue Railroad Company to Metropolitan Street Railway Company.

Dated November 23, 1895, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of ninety-nine years from January 1, 1896, said lease including the railroad operated along the streets described as follows: Commencing at or near the intersection of Vesey Street and Broadway, thence running through Vesey Street to College Place, and through College Place, Church Street and Chambers Street to West Broadway and through West Broadway to Canal Street, and through Canal Street to Hudson Street, and through Hudson Street to Eighth Avenue, and through and along Eighth Avenue to the point where the street or road commonly called the McCombs Dam Road intersects or meets Eighth Avenue; thence through and along the said McCombs Dam Road to or near the westerly end of the bridge known as McCombs Dam Bridge, with an extension or branch running from the junction of West Broadway and Canal Street to Broadway, and also the extension of its railroad from the junction of McCombs Dam Road along Eighth Avenue to the Harlem River.

Lease of The Forty-second Street and Grand Street Ferry Railroad Company to the Metropolitan Cross-town Railroad Company and The Houston, West Street and Pavonia Ferry Railroad Company.

Dated April 6, 1893, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor and any extensions of the charter, said lease including the railroad operated along the streets described as follows: Commencing at the ferry at the western extremity of Forty-second Street; thence through and along Forty-second Street, with a double track to Tenth Avenue; through and along Tenth Avenue to Thirty-fourth Street; through and along Thirty-fourth Street, with a double track, to Broadway; through and along Broadway to Twenty-third Street; through and along Twenty-third Street to Fourth Avenue; through and along Fourth Avenue and Union Square, with a double track, to Fourteenth Street; through and along Fourteenth Street, with a double track to Avenue A; through and along Avenue A, with a double track, to Second Street, and thence along Avenue A, with a single track, to First Street; through and along First Street to Houston Street, with a single track, to Cannon Street; through and along Cannon Street, with a single track, to Grand Street; through and along Grand Street, with a single track, to Goerck Street, and thence through and along Grand Street, with a double track, to Grand Street Ferry, at the foot of Grand Street, East River; and also from the intersection of Second Street and Avenue A through and along Second and Houston Streets, with a single track to Goerck Street; thence through and along Goerck Street, with a single track, to Grand Street to Grand Street Ferry.

Lease of The New York and Harlem Railroad Company (city line) to the Metropolitan Street Railroad Company.

Dated June 11, 1896, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of nine hundred and ninety-nine years from July 1, 1896; said lease including the railroad operated along the streets described as follows:

Commencing at intersection of Park Row, Ann Street and Broadway, to Centre Street, to Grand Street and Broome Street to Bowery, to Fourth Avenue, to Forty-second Street, to Madison Avenue, to One hundred and thirty-eighth Street; also on Eighty-sixth Street from Madison Avenue to First Avenue; on First Avenue to Ninety-third Street to Astoria Ferry; also extension on Thirty-second and Thirty-third Streets, Lexington Avenue and Thirty-fourth Street, from Fourth Avenue to Thirty-fourth Street Ferry.

Lease of The Ninth Avenue Railroad Company to The Houston, West Street and Pavonia Ferry Railroad Company.

Dated March 12, 1892, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of ninety-nine years, said lease including the railroad operated along the streets described as follows: Commencing at the intersection of Broadway and Fulton Street, running through Fulton Street to Greenwich Street; thence through and along Greenwich Street to Ninth Avenue; thence through and along Ninth Avenue and Columbus Avenue to the Grand Boulevard; thence through and along the said Boulevard to Amsterdam Avenue (formerly Tenth Avenue), and thence along Amsterdam Avenue to Manhattan Street, returning through Amsterdam Avenue, the Boulevard, Columbus Avenue, Ninth Avenue, Gansevoort Street and Washington Street to Fulton Street; thence through Fulton Street to Broadway to the place of beginning; also on

Fifty-third Street from Seventh Avenue to Ninth Avenue.

Lease of The Second Avenue Railroad Company to Metropolitan Street Railway Company.

Dated January 28, 1896, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor and any extensions of said charter, said lease including the railroad operated along the streets described as follows: Upon First Avenue and Second Avenue, through various streets and avenues in the City of New York from the Harlem River to Peck Slip, with extensions and connections from Eighth Avenue through the transverse road in Central Park, along Eighty-fifth Street, connecting with Madison Avenue. Also an extension from Bowery through Worth Street to Broadway. Also an extension from Second Avenue and Tenth Street, through Tenth Street and Astor Place to Broadway.

Lease of Sixth Avenue Railroad Company to The Houston, West Street and Pavonia Ferry Railroad Company.

Dated February 1, 1892, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of eight hundred years, said lease including the railroads operated along the streets described as follows: Commencing at the intersection of Fifty-ninth Street and Sixth Avenue, running thence southerly along Sixth Avenue to Carmine Street; thence through Carmine Street to Varick Street; thence through Varick Street to Canal Street; thence through Canal Street to West Broadway; and also from the intersection of West Broadway and Canal Street, thence through and along West Broadway to Vesey Street; thence through Vesey Street to Broadway; and also through Church Street to Chambers Street, and through Chambers Street to Broadway; and also upon and along Lenox Avenue

from One hundredth and Tenth Street to the Harlem River, also on West Third Street from Carmine to Sullivan Streets. Also on Fifty-third Street from Sixth Avenue to Seventh Avenue.

Lease of the Twenty-Third Street Railway Company to The Houston, West Street and Pavonia Ferry Railroad Company.

Dated April 25, 1893, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor, and any extensions of said charter, said lease including the railroad operated along the streets described as follows: Upon Twenty-third Street from the North River to the East River, and upon Second Avenue from its intersection with Twenty-third Street to Twenty-ninth Street, and thence through Twenty-ninth Street, and also through Twenty-eighth Street to First Avenue, and thence through First Avenue to Thirty-fourth Street.

Lease of the Third Avenue Railroad Company to Metropolitan Street Railway Company.

Dated April 13, 1900, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of nine hundred and ninety-nine years, said lease including the railroad operated along the streets described as follows: Beginning at the intersection of Park Row and Broadway; thence extending along Park Row, the Bowery, Third Avenue to the Harlem River; also extending from the North River at the foot of One hundred and thirtieth Street, thence through One hundred and thirtieth Street, Manhattan Street and One hundred and twenty-fifth Street to the East River; also extending from One hundred and twenty-fifth Street, through Amsterdam Avenue to the terminus of said Avenue; and also on One Hundred and thirtieth Street from Third Avenue to a point at or near Lexington Avenue.

Together with all and singular the improvements on said properties, and all and singular the railroads, lands, buildings, structures, fixtures, privileges, franchises, rights of way, trackage rights, contracts, consents, leaseholds, easements and other rights and interests then owned by the Metropolitan Street Railway Company; also all and singular the tracks, side tracks or sidings, switches, rails, bridges, fences, buildings, depots, station-houses, power-houses, car-houses, machine shops, repair shops and other shops, and all other buildings, improvements, erections and structures, and all dynamos, belting, engines, boilers, regulators, meters, poles, trolleys, conduits, feeders, cables, wires, switchboards, lamps and machinery for producing, generating and distributing electricity or power; and also all and singular the rolling stock, equipment, motors, engines, tenders, carriages, cars, trucks, horses, harness, tools, implements, furniture, fixtures, machinery, materials, coal, wood, oil, fuel and other supplies; and also all maps, drawings, profiles, licenses, records, deeds, contracts and agreements, p[illegible]cents and patented inventions and processes then owned by the Metropolitan Street Railway Company, all of which personal property was thereby declared to be fixtures and appurtenances of said railroads; and also all then present or future improvements and additions made or to be made upon and to any or all of said railroads or property, real and personal, and any and all equipment therefor and renewals or replacements of the same or of any part thereof or of the appurtenances; and also all and every other railroad, which the Metropolitan Street Railway Company should thereafter acquire or construct by means of the proceeds of any of the bonds thereby secured, and all power-houses, real estate, equipment and other property, real or personal, appurtenant thereto.

And all and singular the tolls, fares, rents, issues earnings, income, profits and other benefits and advantages of, or in any wise growing out of, all or any of the said several railroads, franchises and property,

and all and singular the tenements, hereditaments and appurtenances to any of the said railroads or property belonging, or in any wise appertaining, and the reversion or reversions, remainder or remainders thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well at law as in equity, of the Metropolitan Street Railway Company, in and to the same and every part and parcel thereof with the appurtenances.

IV.

AND ALSO ALL THE RIGHT, TITLE AND INTEREST of the Metropolitan Street Railway Company in and to the following shares of stock which were then pledged and deposited with the Guaranty Trust Company of New York under the mortgage dated February 1, 1897, from the Metropolitan Street Railway Company to said Guaranty Trust Company of New York, as Trustee, securing the General Mortgage and Collateral Trust Five Per Cent. Gold Bonds of the Metropolitan Street Railway Company, viz:

1. Fourteen thousand (14,000) shares of the capital stock of The Broadway and Seventh Avenue Railroad Company of the par value of one hundred dollars ($100) each.

2. Four thousand (4,000) shares of the capital stock of the Forty-second Street and Grand Street Ferry Railroad Company of the par value of one hundred dollars ($100) each.

3. Three thousand (3,000) shares of the capital stock of the Central Park, North and East River Railroad Company of the par value of one hundred dollars ($100) each.

4. Nine thousand, nine hundred (9,900) shares of the capital stock of the Thirty-fourth Street Cross-Town Railway Company, of the par value of one hundred dollars ($100) each.

To have and to hold the said described premises and

property unto your orator, its successors in the trust, its or their assigns, in trust for the equal and proportionate benefit and security of all holders of the bonds and coupons issued and to be issued and secured by said mortgage and for the enforcement of the payment of the said bonds and interest when payable according to the tenor, purport and effect of such bonds and coupons and to secure the performance and observance of and compliance with the covenants and conditions of the said indenture, without preference, priority or distinction as to lien or otherwise of one bond over any other bond by reason of priority in the issue, sale or negotiation thereof or by reason of the purpose of its issue as in said mortgage or deed of trust more fully set forth. A copy of this mortgage marked Exhibit "A" is filed herewith and your orator prays leave to refer to the same as if it were fully set forth in this bill of complaint. Said mortgage was duly recorded in the office of the Register of the County of New York in which the property thereby mortgaged was situated. Your orator duly accepted the trusts therein created and it was and now is fully authorized and empowered to take and hold in trust the property conveyed to it therein and to execute the trusts reposed in it under and by virtue of the provisions thereof.

V. After the execution and delivery of said mortgage the Metropolitan Company duly made and executed bonds of the issue described in said mortgage of the aggregate par value of Sixteen million six hundred and four thousand dollars ($16,604,000.) all of which bonds were duly certified by your orator in all respects as provided in said mortgage, and all of said bonds, as your orator is informed and believes, were duly issued by the Metropolitan Company for a valuable consideration and in accordance with the provisions of said mortgage and said bonds are now outstanding in the hands of divers persons and corporations who are now the owners and holders thereof for value and your orator is advised and avers that said bonds so issued as aforesaid are now in all respects valid outstanding

obligations of the defendant Metropolitan Company and entitled to the benefit and security of the said mortgage.

VI. Certain of the bonds so issued as aforesaid were certified and delivered by your orator and issued in accordance with the provisions of subdivision (2) of Article Second of said mortgage against the deposit with your orator as security for the bonds issued and to be issued under said mortgage of the following securities, viz.:

First Mortgage Five Per Cent Bonds of The Broadway and Seventh Avenue Railroad Company due June 1, 1904	$1,497,000.00
Consolidated Mortgage Seven Per Cent Bonds of the Central Park North and East River Railroad Company due December 1, 1902	1,200,000.00
Second Mortgage Five Per Cent Bonds of The Broadway Surface Railroad Company due July 1, 1905	1,000,000.00
Five Per Cent Bonds of The Metropolitan Crosstown Railway Company due May 1, 1901	300,000.00
First Mortgage Six Per Cent Extended Bonds of the Twenty-third Street Railway Company due January 1, 1909	250,000.00
First Mortgage Six Per Cent Extended Bonds of the Forty-second Street and Grand Street Ferry Railroad Company, due January 1, 1909	$236,000.00
Five Per Cent Debenture Bonds of the Twenty-third Street Railway Company due January 1, 1906	150,000.00
Bond of John D. Crimmins due August 1, 1897, secured by mortgage to The Eighth Avenue Railroad Company	200,000.00
Bond of John D. Crimmins due February 20, 1894, secured by mortgage to The Mutual Life Insurance Company of New York	150,000.00

Said securities so deposited with your orator ever since have been and now are held in trust by it subject to the trusts declared in said mortgage as additional security for the payment of the bonds issued thereunder.

VII. Your orator further shows that as it is informed and believes, simultaneously with or immediately prior to the execution and delivery of the said mortgage, Exhibit "A" filed herewith, the Metropolitan Company executed and delivered a certain Indenture of Lease dated February 14, 1902, between the Metropolitan Company and the defendant the New York Company, then known as Interurban Street Railway Company, under and by virtue of the provisions of which the said Metropolitan Company did grant, lease and demise to the said Interurban Street Railway Company for the full term of Nine hundred and ninety-nine years from February 24, 1902, all its railroads and railroad routes and all its real estate and the buildings and improvements thereon, and all its leasehold interests and leased lines, including all the street surface railroads and real estate owned by it, and all the street surface railroads and railroad routes operated by it as lessee which are described in the said mortgage or deed of trust, Exhibit "A" filed herewith and which were conveyed to your orator subject to the Trusts thereof.

The said lease provided that all income which the lessor should receive or be entitled to receive from any of its leased lines or from any stocks, bonds or other securities now or thereafter held by it and from every other source whatsoever, should be the property of the lessee; and the said lease further provided that the lessee should, from time to time, pay or cause to be paid all rentals and other sums of money which were or might be or become due or payable under or by reason of any leases and other contracts to which the lessor was a party or to which any of the demised property was or might be subject and the lessee agreed

to pay all interest upon the funded debt of the lessor and other fixed charges of the lessor.

Said lease further provided that the lessee should pay all interest upon all bonds of the lessor thereafter to be issued in accordance with the provisions of the lease.

Your orator alleges on information and belief, that all the bonds issued under said mortgage, Exhibit "A" filed herewith, were issued by the Metropolitan Company in accordance with the provisions of said lease and with the consent of the New York Company, and in and by said indenture of lease the New York Company did agree to pay the interest on said bonds. A copy of said lease is filed herewith marked Exhibit "B" and your orator prays leave to refer to the same as if it were fully set forth in this bill of complaint.

Shortly after the execution of said lease, as your orator is informed and believes, the New York Company entered into possession of the said demised railroads and property and has operated the same and has collected the rents and profits thereof until the appointment of its receivers as hereinafter mentioned.

VIII. On or about the 24th day of September, 1907 as your orator is informed and believes, the Pennsylvania Steel Company and The Degnon Contracting Company filed their bill in this Court against the defendant New York Company alleging its insolvency and praying for the appointment of receivers of its property. Thereafter the New York Company filed its answer to said bill admitting the allegations thereof and thereupon and on or about September 24, 1907 by order of this Court, the above named defendants Adrian H. Joline and Douglas Robinson were appointed receivers of the said defendant New York Company and of all its property, wherever situated, and they were thereby authorized, empowered and instructed among other things, to enter upon and take possession of all such property and to manage, operate and control the same.

Thereafter, as your orator is informed and believes, the said Adrian H. Joline and Douglas Robinson, appointed receivers as aforesaid, duly qualified as such receivers and as such receivers entered upon and took possession of the property of the said defendant New York Company, including the property which is described in the said mortgage dated March 21, 1902, and was conveyed to your orator subject to the trusts thereof, and they have used and operated the same and are now, as such receivers, in possession of said property.

Your orator files herewith a copy of said bill and answer and order marked Exhibit "C" and prays leave to refer thereto for a precise statement of the contents thereof.

IX. Your orator further alleges, as it is informed and believes, that thereafter the Metropolitan Company presented its duly verified petition to this Court wherein it prayed that it might become a party defendant to said suit of The Pennsylvania Steel Company and The Degnon Contracting Company against the New York Company and that the receivership under the Bill of Complaint in the said cause be extended so as expressly to embrace the interests of the Metropolitan Company in said property.

Thereafter and on October 1, 1907, by an order of this Court, the Metropolitan Company was made a party defendant in said cause and the receivership in said cause was extended to the properties of the Metropolitan Company as prayed in said petition and the said Adrian H. Joline and Douglas Robinson theretofore appointed receivers in said cause, were appointed receivers of the properties of the Metropolitan Company.

Thereafter and on October 1, 1907, as your orator is informed and believes, the said Adrian H. Joline and Douglas Robinson duly qualified as such receivers and as such receivers they are now in possession of all the railroads, properties and franchises of the Metropoli-

tan Company described in said Mortgage dated March 21, 1902, both as receivers of the Metropolitan Company and as receivers of the New York Company.

Your orator files herewith a copy of said petition and of said order of this Court marked exhibit "D" and prays leave to refer thereto for a precise statement of the contents thereof.

X. It is alleged in said petition and your orator so charges, that the various lines of railway embraced in said lease to the New York Company, as well the lines owned by the Metropolitan Company as the lines leased to it, are subject to funded indebtedness secured by mortgage which is now outstanding and which so far as not outstanding at the date of the execution and delivery of said lease, has since been created with the consent of said lessee and that failure to meet the interest on such underlying funded indebtedness as such interest matures, will operate also as a default under the mortgage securing the indebtedness the interest on which shall so become in default and will render said mortgage enforceable. Said petition further shows and your orator charges the fact to be that the total amount of such funded indebtedness now outstanding secured by mortgages (exclusive of the bonds issued and secured under the mortgage to your orator dated March 21, 1902) amounts to upwards of Eighty-three million dollars ($83,000,000) and the amount of annual interest charges thereunder amounts to upwards of Three million seven hundred and fifty thousand dollars ($3,750,000).

It is further alleged in said petition and your orator so charges, that by said lease made by the Metropolitan Company to the New York Company, the Metropolitan Company parted with the possession of its entire railroad system; that the Metropolitan Company has no other resources wherewith to meet the fixed charges on the mortgaged indebtedness of its said system so leased, or to meet the accruing rentals of said lines so leased to the Metropolitan Company

or its predecessors and by the Metropolitan Company so leased to the New York Company or to meet judgments for claims for personal injuries or to meet its outstanding obligations for capital expenditures as they mature or to meet other indebtedness or liabilities of the Metropolitan Company than the rentals reserved under said lease made by the Metropolitan Company to the New York Company as part of which said New York Company agreed to pay such fixed charges and such rentals and to perform the other covenants therein contained.

XI. Your orator further shows that in and by said mortgage of the Metropolitan Company to your orator, dated March 21, 1902 and in and by Article Fifth thereof it is among other things, provided that in case in any judicial proceedings by any party other than the trustee under said mortgage, a receiver should be appointed of the Metropolitan Company, or a judgment or order entered for the sequestration of its property, the trustee under said mortgage should be entitled forthwith to exercise the right of entry conferred under said mortgage and also any and all other rights and powers conferred by said mortgage and provided to be exercised by the trustee thereunder upon the occurrence and continuance of default; and that as matter of right the trustee thereunder should, thereupon, be entitled to the appointment of a receiver of the railroads, property and premises thereby mortgaged and pledged and of the tolls, earnings, income, rents, issues and profits thereof with such powers as the Court making such appointment should confer.

XII. Your orator is advised and therefore avers, that by reason of the appointment of receivers of the properties of the Metropolitan Company, as hereinbefore alleged, your orator as Trustee under said mortgage dated March 21, 1902 is forthwith entitled to exercise the right of entry conferred by said mortgage and is entitled to collect and receive all tolls, earnings,

incomes, rents, issues and profits of the mortgaged railroads and premises and every part thereof and is entitled to have the tolls, earnings, income, rents, issues and profits of the mortgaged property applied in accordance with the provisions of the said mortgage to your orator dated March 21, 1902 and to that end as matter of right, is entitled to the appointment of a receiver of the railroads, property and premises thereby mortgaged and pledged and of the tolls, earnings, income, rents, issues and profits thereof.

XIII. Your orator further alleges on information and belief, that unless the earnings, issues and profits of the railroads, properties and premises mortgaged to your orator be applied in accordance with the provisions of said mortgage and unless the fixed charges of the said railroads be paid and the interest on the bonds secured by underlying mortgages on the various portions of the railroad system leased to the New York Company be paid as the same accrues, there is grave danger that the said mortgages or some of them, may be foreclosed and that the security which your orator now has for the protection of the holders of the bonds issued under the said mortgage dated March 21, 1907 may be greatly impaired and the mortgaged property may become disrupted so that the property embraced in said mortgage will be inadequate security for the payment of the said bonds and your orator is advised that it is necessary for the protection of the interests of the holders and owners of the said bonds that a receiver be appointed in this cause of the railroads, property and premises of the Metropolitan Company mortgaged and pledged to your orator by said mortgage dated March 21, 1902 and of the tolls, earnings, income, rents, issues and profits thereof and that unless such receiver be appointed your orator, as Trustee of the bondholders secured by said mortgage will suffer great and irremediable loss.

XIV. Your orator has been requested by persons owning or representing, as your orator is informed and

believes, a large number of the bonds issued under and secured by said mortgage to your orator dated March 21, 1902, to enforce their rights under said mortgage and to exercise the powers conferred upon your orator as Trustee thereunder.

XV. The said property is now in the possession of this Court through its receivers, appointed by its orders as hereinabove set forth, and upon application by your orator leave has been granted to your orator to include as defendants herein the said Adrian H. Joline and Douglas Robinson as receivers of the New York Company and the said Adrian H. Joline and Douglas Robinson as receivers of the Metropolitan Company.

In consideration whereof and for as much as your orator is remediless in the premises according to the strict rules of common law and can only have relief in a Court of Equity where matters of this kind are properly cognizable, your orator therefore prays the aid of this Honorable Court:

1. That the said defendants may be required to make answer respectively unto all and singular the matters hereinbefore stated and charged as fully and particularly as if the same were herein expressed and they thereunto particularly interrogated but not under oath, answer under oath being hereby expressly waived.

2. That said mortgage or deed of trust may be decreed to be a valid lien upon the property therein described.

3. That it may be adjudged and decreed that a right of entry into and upon all the railroads, rolling stock, property, lands, leaseholds, rights, interests, franchises and premises and the income thereof conveyed or intended to be conveyed by said mortgage and each and every part thereof has accrued to your orator and that your orator is entitled to have the tolls, earnings,

income, rents, issues and profits of the mortgaged property applied in accordance with the provisions of said mortgage and that said tolls, earnings, income, rents, issues and profits be so applied.

4. That pending this suit a receiver or receivers be appointed with the usual power of receivers in like cases of the railroads, property and premises mortgaged and pledged in said mortgage to your orator, dated March 21, 1902 and of the tolls, earnings, income, rents, issues and profits thereof and that such directions may be made with respect to such receivership as may be equitable and proper.

5. That your orator may have such other and further relief in the premises or both as may be just and equitable and as to your Honors shall seem just.

May it please your Honors to grant to your orator a writ or writs of subpœna to be directed to the said defendants Metropolitan Street Railway Company, New York City Railway Company, Adrian H. Joline and Douglas Robinson as Receivers of New York City Railway Company and Adrian H. Joline and Douglas Robinson as receivers of Metropolitan Street Railway Company, The Pennsylvania Steel Company and The Degnon Contracting Company, therein and thereby commanding them and each of them at a certain time and under a certain penalty therein to be named, to be and appear before your Honors in this Honorable Court then and there severally to answer all and singular the matters aforesaid, but not under oath, answer under oath being hereby expressly waived, and to stand to abide and perform such other and further orders or decrees as to your Honors shall seem meet.

MORTON TRUST COMPANY,
By H. M. FRANCIS
Secretary
Complainant.

[SEAL]

BRONSON WINTHROP,
Solicitor for Complainant and of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:
CITY & COUNTY OF NEW YORK,

HARRY M. FRANCIS being duly sworn deposes and says, that he is the Secretary of Morton Trust Company, the above named complainant; that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief and as to those matters he believes the same to be true.

H. M. FRANCIS.

Sworn to before me this 8th day of October, 1907.

E. J. BLEGARDE
(SEAL) Notary Public
Richmond Co.
Certificate filed in New York Co.

Filed 9th October, 1907.

Exhibit A referred to in the foregoing bill of complaint of the Morton Trust Company:

(A copy of the Mortgage of the Metropolitan Street Railway Company, dated March 21, 1902, which is the same as Schedule B attached to Exhibit D hereto annexed.)

Exhibit B referred to in the foregoing bill of complaint of the Morton Trust Company:

(A copy of the Lease of the Metropolitan Street Railway Company to the Interurban Street Railway Company, which is the same as Schedule A attached to Exhibit D hereto annexed.)

Exhibit C referred to in the foregoing bill of complaint of the Morton Trust Company:

(A copy of the bill, answer and order appointing receivers in the suit of the Pennsylvania Steel Company

against the New York City Railway Company, annexed to this return as Exhibits A, B, and C.)

Exhibit D referred to in the foregoing bill of complaint of the Morton Trust Company :

(A copy of the petition of the Metropolitan Street Railway Company and of the order extending the receivership to the properties of that company, annexed to this return as Exhibits D and E.)

Exhibit H'.

THE PRESIDENT OF THE UNITED STATES OF AMERICA, TO METROPOLITAN STREET RAILWAY COMPANY, NEW YORK CITY RAILWAY COMPANY, ADRIAN H. JOLINE AND DOUGLAS ROBINSON AS RECEIVERS OF NEW YORK CITY RAILWAY COMPANY, ADRIAN H. JOLINE AND DOUGLAS ROBINSON AS RECEIVERS OF METROPOLITAN STREET RAILWAY COMPANY, THE PENNSYLVANIA STEEL COMPANY AND THE DEGNON CONTRACTING COMPANY, GREETING :

You are hereby commanded that you and each of you personally appear before the Judges of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, in Equity, on the first Monday of November, A. D. 1907, wherever the said Court shall then be, to answer a bill of complaint exhibited against you in the said Court by Morton Trust Company, and do further and receive what the said Court shall have considered in that behalf. And this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars.

Witness, The Honorable MELVILLE W. FULLER, Chief Justice of the United States, at the Borough of Manhattan, in the City of New York, on the 9th day of October in the year of our Lord one thousand nine

hundred and seven and of the Independence of the United States of America, the one hundred and thirty-second.

JOHN A. SHIELDS,
Clerk.

BRONSON WINTHROP, ESQ.,
Solicitor for Complainant,
32 Liberty St.

The defendants are required to enter appearance in the above cause, in the Clerk's office of this Court, on or before the first Monday of November, 1907, or the bill will be taken *pro confesso* against them.

J. A. S.,
Clerk.

Exhibit H[3].

I hereby certify, That on the 9th day of October, 1907, at the City of New York, in my district, I served the within Subpœna in Equity upon the within-named Defendant, Metropolitan Street Railway Company by exhibiting to Daniel B. Hasbrouck as a director of said Company, at No. 621 Broadway, New York City, the within original, and at the same time leaving with him a copy thereof.

I hereby further certify, That on the 9th day of October, 1907, at the City of New York, in my District, I served the within Subpœna in Equity, upon the within-named Defendant New York City Railway Company, by exhibiting to Oren Root, Jr., as a Director of said Company, at No. 621 Broadway, New York City, the within original, and at the same time leaving with him a copy thereof.

I hereby further certify, That on the 9th day of October, 1907, at the City of New York, in my District, I personally served the within Subpœna in Equity, upon the within-named Defendants Adrian H. Joline and Douglas Robinson, as Receivers of the Metropol-

itan Street Railway Company, by exhibiting to each of them the within original, and at the same time leaving with each of them a copy for each thereof.

I hereby further certify That on the 9th day of October, 1907, at the City of New York, in my District, I personally served the within Subpœna in Equity, upon the within-named Defendants Adrian H. Joline and Douglas Robinson, as Receivers of New York City Railway Company, by exhibiting to each of them the within original, and at the same time leaving with each of them a copy for each thereof.

I hereby further certify, That on the 9th day of October, 1907, at the City of New York, in my District, I served the within Subpœna in Equity upon the within-named Defendant The Pennsylvania Steel Company by exhibiting to Carl Taylor in Room No. 78, P. O. Building, New York City, as Solicitor for the Pennsylvania Steel Company, in the suit of the Degnon Contracting Company and the Pennsylvania Steel Company vs. New York City Railway Company the within original, and at the same time leaving with him a copy thereof.

I hereby further certify, That on the 9th day of October, 1907, at the City of New York, in my District, I served the within Subpœna in Equity, upon the within-named Defendant, The Degnon Contracting Company by exhibiting to Carl Taylor in Room No. 78, P. O. Building, New York City, as Solicitor for the Degnon Contracting Company in the suit of The Degnon Contracting Company and The Pennsylvania Steel Company vs. The New York City Railway Company the within original, and at the same time leaving with him a copy thereof.

Dated New York, October, 10th, 1907.

WILLIAM HENKEL,
United States Marshal,
S. D. N. Y.

[ENDORSED:] U. S. Circuit Court, Southern District N. Y., Filed Oct. 10, 1907, John A. Shields, Clerk.

Exhibit J.

Order Appointing Receivers Under Bill of Complaint of Morton Trust Company.

CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

MORTON TRUST COMPANY, Complainant, AGAINST METROPOLITAN STREET RAILWAY COMPANY, NEW YORK CITY RAILWAY COMPANY, ADRIAN H. JOLINE and DOUGLAS ROBINSON, as Receivers of New York City Railway Company, ADRIAN H. JOLINE and DOUGLAS ROBINSON, as Receivers of Metropolitan Street Railway Company, THE PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY, Defendants.	In Equity.

This cause came on this day to be heard on motion of the complainant for the appointment of receivers as prayed in the bill af complaint.

On said bill of complaint, after hearing Bronson Winthrop, Esq., for complainant, and J. Parker Kirlin, Esq., for defendant Metropolitan Street Railway, Arthur H. Masten, Esq., for defendants Joline and Robinson and notice of this application having been duly given to New York City Railway Company, The Pennsylvania Steel Company and The Degnon Contracting

Company, it is, on motion of Bronson Winthrop, Esq., solicitor for complainant.

ORDERED, ADJUDGED AND DECREED that Adrian H. Joline and Douglas Robinson be and they hereby are appointed under the bill of complaint in this cause receivers of all the railroads, properties and premises mortgaged and pledged under the mortgage dated March 21, 1902, made by the defendant Metropolitan Street Railway Company to the complainant, Morton Trust Company, as trustee, described in the bill of complaint in this cause, and of all the tolls, earnings, income, rents, issues and profits of said railroad, property and premises; that said receivers be and they hereby are authorized to run, manage and operate the said railroads and properties, to collect the rents, income, tolls, issues and profits of said railroads and property, to exercise the authority and franchises of said defendant, and discharge its public duties, acting in all things subject to the supervision of this Court.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said receivers be and they hereby are authorized in their discretion to employ and discharge and fix the compensation of all attorneys, managers, superintendents, agents and employees, and to make such payments and disbursements as may be needful and proper in so doing; that the said receivers be and they hereby are fully authorized and empowered to institute and prosecute in their own names or in the name of said Metropolitan Street Railway Company, all such suits, as may be necessary in their judgment for the proper protection of the trust estate, and the discharge of their trust, and likewise to defend all actions instituted against them as receivers, and also to appear in and continue or defend any suits now pending in any court to which said defendant Metropolitan Street Railway Company is a party, the continuation or defense of which will, in the judgment of said receivers, be necessary for the proper protection of the trust estate, or

the interest and rights of creditors connected therewith.

AND BE IT FURTHER ORDERED, ADJUDGED AND DECREED that said receivers be and they are hereby authorized in their discretion from time to time out of the funds coming into their hands, to pay the expenses of operating the said properties and executing their trusts, and to make such repairs to said properties and premises as in their judgment may be necessary in order safely to conduct said operation under this order.

The said receivers are hereby required to open proper books of account wherein shall be stated the earnings, expenses, receipts and disbursements of their said trust and preserve proper vouchers for all payments made by them on account thereof.

IT IS FURTHER ORDERED that the said receivers shall forthwith file in the office of the clerk of this Court the consent of the surety on the bonds of the said receivers already given in the suit of the Pennsylvania Steel Company and The Degnon Contracting Company against New York City Railway Company and Metropolitan Street Railway Company, that the said bonds shall apply and the liability of the said surety shall continue and exist also in this suit and in respect of any and all acts and transactions of the said receivers whether under their original appointment or under their appointment in this suit or in lieu thereof that the said receivers file in this suit their joint and several bond in the sum of two hundred and fifty thousand dollars, conditioned that they will well and truly perform the duties of their office and duly account for all moneys or property which may come into their hands and abide by and perform all things which they shall be directed to do with sufficient sureties to be approved of by a judge of this Court.

AND IT IS FURTHER ORDERED that each and every of the officers, directors, agents and employees of said defendant, Metropolitan Street Railway Company, be

and they are hereby required and commanded forthwith upon demand of the said receivers or their duly authorized agent, to turn over and deliver to said receivers or their duly constituted representative any of the said property in his or their hands or under his or their control, provided, however, that the complainant shall be entitled to retain possession of any stocks, bonds or securities pledged under said mortgage.

And said defendant Metropolitan Street Railway Company, its officers, directors, agents and employees and all other persons claiming to act by, through or under said defendant, and all other persons whatsoever, are hereby enjoined from interfering in any way whatever with the possession or management of any part of the property over which the receivers are hereby appointed, or interfering in any way to prevent the discharge of their duties and any party in interest may apply for further direction.

Dated, New York, October 9, 1907.

E. HENRY LACOMBE,
U. S. Cir. J.

Filed 9th October, 1907.

Exhibit K.

Decree Continuing Receivership.

IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and DEGNON CONTRACTING COMPANY,
Complainants,

AGAINST

NEW YORK CITY RAILWAY COMPANY, METROPOLITAN STREET RAILWAY COMPANY,
Defendants.

And now, on this seventh day of October, 1907, this cause came on further to be heard upon the pleadings and upon the order made in this cause on the 24th day of September, 1907, directing that the parties hereto show cause why the receivership of the New York City Railway Company and of its property should not be continued during the pendency of this suit, and thereupon after hearing James Byrne of counsel for complainants, James L. Quackenbush of counsel for the defendant New York City Railway Company, J. Parker Kirlin of counsel for the defendant Metropolitan Street Railway Company,

It is Ordered, Adjudged and Decreed that Adrian H. Joline and Douglas Robinson, heretofore by said order of September 24, 1907, appointed temporary receivers of said defendant New York City Railway Company and of all the property of said defendant, be con-

tinued as receivers during the pendency of this suit of said defendant and of all the property of said defendant, real, personal and mixed of whatsoever kind and description and wheresoever situated including all railroads owned, leased or operated by said defendant, all tracks, terminal facilities, offices, shops and all buildings and appurtenances of every kind, all cars and other rolling stock and equipment tools, machinery, furniture, fixtures, materials and supplies, books of account, records and other books, papers and accounts, cash in bank, on deposit and in hand, money, debts, things in action, credits, stocks, bonds, securities, deeds, leases, contracts, muniments of title, bills receivable, rents, issues, profits and income accruing and to accrue as well as all interest, easements, privileges and franchises and all assets of every kind ; that the said receivers be and they hereby are authorized to run, manage and operate the said railroads and properties ; to collect the rents, income, tolls and profits of the said railroads and property, and to exercise the authority and franchise of said defendant and discharge its public duties, acting in all things subject to the supervision of this Court ; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said receivers be, and they hereby are authorized in their discretion to employ and discharge and fix the compensation of all attorneys, managers, superintendents, agents and employees, and to make such payments and disbursements as may be needful and proper in so doing ; that the said receivers be and they hereby are, authorized and empowered to institute and prosecute, in their own names or in the name of said New York City Railway Company, all such suits as may be necessary in their judgment for the proper protection of the trust estate and the discharge of their trust, and likewise to defend all actions instituted against them as receivers, and also to appear in and continue or defend any suits now pending in any court to which said defendant New York City Railway Company is a party, the continu-

ance or defense of which will in the judgment of said receivers be necessary for the proper protection of the trust estate, or the interests and rights of creditors connected therewith;

AND IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that said receivers be and they hereby are authorized in their discretion from time to time, out of the funds coming into their hands, to pay the expenses of operating the said properties and executing their trusts and to make such repairs to said properties and premises as in their judgment may be necessary in order safely to conduct operations under this order, also, with the approval of this court, to pay all taxes and assessments upon the said properties or any part thereof, and all such rentals and instalments as may fall or become due for the use of any portion of said railroads and other property; and also to pay and discharge the current and unpaid pay-rolls incurred in the operation of said railroad system at any time within four months prior to their appointment; and also to pay and discharge the supply and construction accounts incurred in the operation of said railroad system and all such other claims arising from the previous operation of said properties as in their judgment on examination are proper to be paid as expenses of operation; provided that no payment of such accounts or claims shall be made without the express order of this Court.

The said receivers are hereby required to open proper books of account wherein shall be stated the earnings, expenses, receipts and disbursements of their said trust, and preserve proper vouchers for all payments made by them on account thereof.

AND IT IS FURTHER ORDERED that each and every of the officers, directors, agents and employees of the defendant, said New York City Railway Company, and all other persons whomsoever, be and they hereby are required and commanded forthwith, upon demand of the said receivers or their duly authorized agent, to turn over and deliver to said receivers or their duly

constituted representatives, any and all books of account, vouchers, papers, deeds, leases, contracts, bills, notes, accounts, moneys, or other property in his or their hands or under his or their control.

And the defendant, New York City Railway Company and its officers, directors, agents and employees, and all other persons claiming to act by, through or under the defendant and all other persons whomsoever are hereby enjoined from interfering in any way whatever with the possession or management of any part of the property over which the receivers are hereby appointed or interfering in any way to prevent the discharge of their duties or their operating the same, and any party in interest may apply for further direction.

And it is further Ordered, Adjudged, and Decreed that said Adrian H. Joline and Douglas Robinson heretofore by order entered in this cause on October 1, 1907, appointed also receivers of the properties of the defendant Metropolitan Street Railway Company, be and they hereby are continued as receivers during the pendency of this suit of the properties of said defendant Metropolitan Street Railway Company and of said defendant and as such receivers shall have and may exercise in respect thereof the like rights, powers and duties with respect to said defendant that such receivers are hereinbefore given with respect to the New York City Railway Company and its properties.

And it is further Ordered that each and every of the officers, directors, agents and employees of said defendant Metropolitan Street Railway Company, and all other persons whomsoever, be and they are hereby required and commanded forthwith, upon demand of the said receivers or their duly authorized agent, to turn over and deliver to said receivers or their duly constituted representative, any and all books of account, vouchers, papers, deeds, leases, contracts, bills, notes, accounts, moneys or other property in his or their hands or under his or their control.

And said defendant, said Metropolitan Street Rail-

way Company, and its officers, directors, agents and employees and all other persons claiming to act by, through or under said petitioner and all other persons whomsoever, are hereby enjoined from interfering in any way whatsoever with the possession or management of any part of said property over which the receivers have been appointed or interfering in any way to prevent the discharge of their duties or their operating the same.

IT IS FURTHER ORDERED that the bonds in the sum of two hundred and fifty thousand dollars heretofore given by said receivers for the faithful performance of their duties and filed in this cause stand and be and the said bonds hereby are approved.

IT IS FURTHER ORDERED that the Statement of the powers, duties, and rights of said receivers contained in this order supersedes, from and after the entry of this order, the statement thereof contained in said orders of September 24th, 1907 and October 1st, 1907.

It is further Ordered that any party in interest may apply for further direction.

Dated, New York, October 9th, 1907.

E. HENRY LACOMBE,
United States Circuit Judge.

Filed October 9th, 1907.

Exhibit L.

Amendment to Decree Continuing Receivership.

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY, and ano.,

vs.

THE NEW YORK CITY RAILWAY COMPANY and METROPOLITAN STREET RAILWAY COMPANY.

Upon suggestion that its recitals are incomplete, the decree in this suit making receivers permanent, which was made and entered on October 9th, 1907, is hereby amended by including in the recital of counsel heard the following:

"Roger Foster appeared for Joseph Konrad a tort creditor having a judgment against the New York City Railway Company, which had been appealed and secured on appeal, and also for Gallagher and others tort creditors of the Metropolitan Street Railway Company, presented to a petition asking to be allowed to intervene and to be heard on behalf of intervenors for relief prayed for. The Court set the hearing upon said petition for October 14th at 3 P. M., but stated that it would hear Mr. Foster at the pending hearing as *amicus curiæ* if he so desired, and he was so heard.

Gilbert Ray Hawes appeared for certain tort creditors of defendant New York City Railway Company,

having unliquidated claims, and also presented a petition asking to be allowed to intervene and to be heard on behalf of intervenors for relief prayed for. The Court set the hearing upon said petition for October 14th, at 3 P. M., but stated that it would hear Mr. Hawes at the pending hearing as *amicus curiæ*, if he so desired, and he was so heard."

October 15th, 1907.

E. HENRY LACOMBE,
U. S. Circuit Judge.

Filed October 15, 1907.

Exhibit M.

Decree Appointing Special Master.

IN THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY,

AGAINST

NEW YORK CITY RAILWAY COMPANY, ET AL.

And now, on this 25th day of October, 1907, this cause came on further to be heard upon the Bill of

Complaint and the Answer of the above named defendant thereunto, and upon all the proceedings had in the cause, whereupon, on further consideration thereof, the solicitors for all the parties being before the Court, it is

ORDERED, ADJUDGED AND DECREED as follows, namely: The Court finds that the defendant, the New York City Railway Company, is insolvent and that its assets and property of every description constitute a fund in which the complainants and other creditors of said defendant corporations are interested and that the assets of said corporation should be marshalled and the nature and extent of the rights, liens, equities and priorities of the several creditors thereof should be ascertained and decreed by the Court.

And it is further ORDERED, ADJUDGED AND DECREED that it be referred to William L. Turner, Esquire, who is hereby appointed Special Master in this cause, to take proof of the amount of all claims and demands against the said the New York City Railway Company and to report the same to this Court with all convenient speed.

And it is further ORDERED, ADJUDGED AND DECREED that all claims and demands against the said defendant shall be presented to the said Special Master on or before the 30th day of November, 1907, and that said Special Master give public notice accordingly by publication twice in each week for a period of three weeks in at least two daily newspapers published in the City of New York to be selected by him, which said notice shall also contain a statement of the time and place of the first hearing before said Special Master.

And it is further ORDERED, ADJUDGED AND DECREED that Adrian H. Joline and Douglas Robinson, the Receivers heretofore appointed herein file their accounts with the said Special Master on the 10th day of December, 1907, covering the period from September 24th, 1907, to and including November 30th, 1907, and shall

file their accounts every two months thereafter, and that said Special Master shall examine the same and report thereon to the Court from time to time.

And all other questions not hereby disposed of and determined are reserved for further adjudication.

Dated New York City, October 25th, 1807.

(Signed) E. HENRY LACOMBE,
U. S. C. J.

Filed 25th October, 1907.

Exhibit N.

Order Denying the Petition of Joseph Conrad.

At a Stated Term of the Circuit Court of the United States for the Southern District of New York in the Post Office Building, New York City, on the 6th day of November, 1907.

Before HONORABLE E. HENRY LACOMBE, United States Circuit Judge.

PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY

AGAINST

THE NEW YORK CITY RAILWAY COMPANY.

IN THE MATTER

OF

The Application of JOSEPH KONRAD, individually and as Admistrator of the Estate of Paul Planovsky, deceased, for leave to intervene.

Joseph Konrad, individually and as administrator of the Estate of Paul Planovsky, deceased, having presented a petition for leave to intervene in the above entitled suit in equity; now, after hearing Roger

Foster, Esq., in support of said petition, and James Byrne, Esq., in opposition thereto, it is hereby

Ordered that the said petitioner have leave to file said petition; and that the same hereby is directed to be filed accordingly; and that the complainants herein have leave to file the affidavits presented in opposition to said petition and that the same hereby are filed accordingly; and that the prayer of said petition be and the same hereby is denied.

Filed 6th November, 1907.

Exhibit N2.

Petition of Joseph Konrad for Leave to Intervene.

CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY,

AGAINST

THE NEW YORK CITY RAILWAY COMPANY.

IN THE MATTER

OF

The Petition of JOSEPH KONRAD, individually and as Administrator of the Estate of Paul Planovsky, Deceased.

TO THE HONORABLE THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FEW YORK.

The petition of Joseph Konrad, individually and as administrator of the estate of Paul Planovsky, deceased, respectfully shows:

I. Your petitioner is a resident of the City, County and State of New York. On or about the 9th day of

October, 1906, your petitioner was duly appointed by the Surrogate's Court of the City and County of New York, a court of competent jurisdiction, administrator of the goods, chattels and credits of Paul Planovsky, who had previously died in said City, County and State, of which said Paul Planovsky was then a resident. On or about the 13th day of October, 1907, your petitioner duly qualified as such administrator and your petitioner still is such administrator. On or about the 22nd day of June, 1907, your petitioner duly recovered in the Supreme Court of the State of New York a judgment for the sum of $8,538.94, against the New York City Railway Company, the defendant above named, which judgment was then duly filed and entered in the office of the Clerk of the County of New York. Said judgment is still unpaid. Said defendant subsequently appealed from said judgment to the Appellate Division of the Supreme Court of the State of New York for the First Department. Such appeal is still pending and undetermined. An undertaking to secure the payment of said judgment, in case said judgment is affirmed upon said appeal, has been filed by the defendant in the said Clerk's office with the American Surety Company as surety to said undertaking. The said defendant has contended and still contends, that the said judgment was erroneously rendered; and the said defendant relies in support of said appeal upon numerous technical objections and exceptions taken during the trial of said action, including certain objections and exceptions to the admission of evidence, and including certain objections and exceptions to the charge and to the refusals to charge of the trial Judge, which objections and exceptions do not affect the merits of plaintiff's cause of action in the suit in which said judgment was rendered. And should the said judgment be reversed, it is unlikely that said reversal will be a decision against the merits of plaintiff's said claim. Said defendant has given no security for the payment of said claim in case said judgment is reversed and in case a new

trial is ordered and in case a subsequent judgment is recovered against said defendant. The action which resulted in said judgment was an action brought to recover damages for the death of the said decedent because of the negligence of said defendant. Your petitioner is also, individually, a creditor of the said defendant to an amount equal to at least Two Hundred ($200.00) Dollars, because of the arbitrary and illegal execution by said defendant from your petitioner, at divers times during the past four (4) years, of additional fares upon his transfer from one car to another car of said defendant at and near the junction of 14th Street and Ninth Avenue and 23rd Street and Broadway and 8th Street and Second Avenue, in the Borough of Manhattan, City, County and State of New York; and because of the liability of said defendant to him for penalties because of said exaction; and because of the refusal of said defendant to give his tickets entitling him to transfers at said junction without the payment of additional fares; and because of the refusal of said defendant to give him such transfers free.

Your petitioner is obliged, in the transaction of his business, daily to take transportation upon one or more of the street railroads, which were in the possession of the said defendant at the time of the appointment of the receivers herein described. For several years he has suffered and he still suffers great inconvenience and danger to his life, body and health, because of insufficient transportation facilities, including an insufficient number of cars furnished by the defendant, and because of the reckless and dangerous manner in which said cars are and have been operated.

II. On the 24th day of September, 1907, a bill in equity was filed in the Clerk's office of this Court by the above named complainants, the Pennsylvania Steel Company and the Degnon Contracting Company, against the above named defendant, the New York City Railway Company. The relief prayed in said bill

was in substance ; the administration of the assets of said defendant, and the marshalling of its said assets, and the appointment of a receiver of its said assets, and an injunction against interference with the possession of said assets by said receiver during the pendency of said suit, and a writ of subpœna, together with the prayer for general relief. In the said bill of complaint, it appeared : that the said complainants were citizens of different States ; that neither of said complainants was a judgment creditor of said defendant ; but that each of said complainants claimed to be a contract creditor of said defendant ; the said Steel Company for goods alleged to have been sold and delivered to said defendant ; and said Degnon Contracting Company for services alleged to have been performed for said defendant. A paper purporting to be an answer to said bill in equity was filed on behalf of the said defendant in the Clerk's office of said Court upon the same day. Upon information and belief : that the said paper purporting to be an answer was filed in said Clerk's office within less than ten minutes after the filing of the said bill in equity therein. At or about the same time of the filing of said paper purporting to be an answer, the appearance of said defendant in said suit was entered. Your petitioner is informed and believes and avers that no subpœna has been issued upon said bill. A rule for the issue of a subpœna to answer said bill, returnable on the 1st day of November, was entered in the rule book in the Clerk's office of this Court on said day. In the regular course of practice, no answer would have been filed to said bill in equity before the 1st Monday in December, 1907.

III. On September 24th, 1907, upon the consent of the counsel for the said defendant, an order was made by the Honorable E. Henry Lacombe, a Judge of this Court, which order appointed as temporary receivers of the assets of the said defendant, Adrian H. Joline and Douglas Robinson, both of whom have since qualified as such. The said order contained a

number of extraordinary provisions, which your petitioner believes and avers were not observed by the said Judge at the time when he signed said order. Amongst others were: a provision providing for the payment by said receivers, without application to the Court, of any rentals that might subsequently become due for the use of the property in the possession of the said defendant; a provision authorizing said receivers, without application to the Court, to pay and discharge all such claims arising from the previous operation of the said property in the possession of said defendant, as in the judgment or examination of said receivers should be properly paid as expenses of the operation of said property; with a provision authorizing said receivers to employ and to fix the compensation of all officers, attorneys, managers and superintendents of the said defendant railway company, and to borrow money, without application to the Court, for the purpose of redeeming such securities pledged by said defendant as there might be determined to redeem. Your petitioner avers upon information and belief, that the said powers given to said receivers are extraordinary and are powers which customarily are only exercised by the Courts; and that they illegally vest in said receivers the power to make illegal preferences among creditors of said defendant. Said order further contained a provision enjoining all other persons whomsoever, not parties to the suit, as well as the said defendant, and its officers, directors, agents and employees, from interfering in any way with the possession or management of any part of the property for which said receivers were appointed; and a further provision directing the parties to this suit to show cause before this Court on the 7th day of October, 1907, why the said receivership should not be continued during the pendency of this suit; and that upon the hearing thereof any other creditor of the defendant or any party in interest, may be heard. Said order contained no provision providing that any claims against said railway company should be entitled

to a preference in the distribution of its assets, although, as your petitioner is informed and believes, such provisions are customary in orders appointing receivers of railway companies.

IV. The said bill of complaint contained amongst other things, the following statement concerning said defendant: "That in the course of the operation of "its lines, numerous accidents have occurred, in re- "spect to which suits have been brought and are now "pending; and that said suits, to the number of "several thousands, are now upon the calendars of the "Courts awaiting trial; and that the defendant will be "without means to meet judgments recovered in said "suit." The said action by your petitioner which resulted in the judgment above described is one of the actions referred to in said allegation in said bill. One of the concealed objects of said suit and of the motion for said receivership was to delay the trial of said suits and to avoid the payment of the claims that are the foundation of said suits. No affidavit that there was no collusion was annexed to said bill in equity. The said answer admitted all the allegations in said bill of complaint and joined in the prayer of the complainants for a receiver. Said answer was verified by the oath of the secretary of said defendant taken on the same day.

V. The said bill of complaint was prepared and filed at the request of the said defendant and at the request of the officers and agents of the said defendant and of the persons in control of the said defendant. Before said bill of complaint was filed, it or a copy thereof was shown to officers and agents and attorneys of said defendant and of the persons in control of said defendant; and the said answer was prepared before said bill of complaint was filed. The said answer or a copy thereof was shown, before the same was filed, to the attorney and counsel for said complainants. Upon information and belief that the counsel fees for the filing

of said bill of complaint were paid out of the funds of said defendant and by persons in control of said defendant; and that the said bill of complaint was prepared by the counsel of said defendant and of persons in control of said defendant. It was published in the newspapers of this City as the result of interviews with officers and agents of said defendant and with persons in control of said defendant, for several days prior to said application; that a receiver of said defendant would be appointed by this Court at the procurement of the said persons. The said suit, in which said bill and answer were filed, did not and does not really nor substantially involve any dispute between the parties to the same. It did not and does not really nor substantially involve any controversy. It did not and does not really nor substantially involve any dispute between said parties within the jurisdiction of this Court. It did not and does not really nor substantially involve any controversy within the jurisdiction of this Court. The parties complainant to said suit were improperly and collusively made and joined as complainants, for the purpose of creating a case, cognizable under the Judiciary acts of the United States. There was not in fact and there never has been any controversy nor dispute between the said defendant and either of said complainants concerning the subject matter of this suit, nor, as your petitioner is informed and believes and avers, concerning any other matter. The object of the commencement of the said suit was to withdraw the administration of the assets and the control of the defendant, which is a corporation organized under the laws of the State of New York, from the jurisdiction of the laws of the Court of the State of New York, and for other purposes, some of which are hereinafter and hereinbefore mentioned.

VI. For several weeks there has been pending in the State of New York, an investigation in pursuance of an act of the legislature of the State of New York, by the Public Service Commission for the City of New

York, into the affairs of the said defendant. In the course of said examination it has been alleged by officers and agents of said defendant, that certain books of said defendant have been destroyed ; and obstacles in the way of the production of the books and papers of said defendant and in the compulsion of the appearance of witnesses who were officers and agents of said defendant and of corporations controlled by said defendant have been interposed by said defendant and by persons in control of the said defendant. Matter has already been discovered in the course of said investigation which tends to prove large liabilities on behalf of the persons in control of said defendant and of the corporations controlled by the same to said corporations and others, by reason of the misappropriation of the funds of the said defendant. One of the purposes of the application for said receivership was in order to impede the further examination into the books and papers of the said defendant by said Commission ; inasmuch as there is grave doubt whether said receivers are obliged to obey the process of said Public Service Commission ; and for the reason that dilatory proceedings in this Court, and upon appeals, and writs of error, will be facilitated should said receivers oppose the production of said books and papers. For, on account of the accumulation of business in the Supreme Court of the United States, and on account of the provisions in the statutes of the United States authorizing writs of supersedeas, as of right, in many cases, and for other reasons, delays can be more easily obtained in the Federal Courts than in the Courts of New York where the process in proceeding in equity, both originally and upon appeal is much more summary.

VII. The said Public Service Commission was created principally for the purpose of remedying grave abuses which have existed for a long time in the management and operation of said defendant and in the operation of the street railroads in its possession,

which, for many years, said defendant has and its predecessors have so operated as to endanger the lives and safety of the people of the City New York and so as not to furnish proper and sufficient accommodatian and transportation for them. At the time when said application for the appointment of said receivers was made, proceedings were pending before said Public Service Commission for the purpose of compelling said defendant to furnish proper, sufficient and safe transportation for passengers in said city. Immediately after the appointment of said receivers, and on or about September 26th, 1907, the attorney for said defendant, who has appeared as its solicitor in the said suit, appeared before said Public Service Commission, filed a certified copy of the order appointing said receivers, and suggested an adjournment of the said proceedings, suggesting to said Public Service Commission, that it might not be wise for said Public Service Commission to continue its proceedings against said defendant; and he procured an indefinite postponement of the proceedings of said Public Service Commission to remedy said abuses and to furnish proper, sufficient and safe transportation to the people of The City of New York because of the appointment of the said receivers and because of his said application. The pressure of business in this Court is so great and the orderly progress of proceedings in chancery is necessarily so slow, that it will be impossible for this Court to remedy said abuses within so short a time as would have been done by said Public Service Commission, had said Public Service Commission not been impeded by the appointment of the said receivers.

VIII. The said defendant is largely indebted to the State and City of New York for the payment of taxes. One of the reasons of the application for the appointment of said receivers was in order to delay proceedings for the collection of said taxes.

IX. The application for the appointment of said receivers was made also for stock jobbing purposes and

to promote speculation in stock of said defendant and of other corporations affiliated therewith and controlled thereby, and in control thereof, by officers, directors and persons in control of said defendant.

X. Another reason for the application for the appointment of said receivers was in order to procure the continuance of the payments of large, excessive and exorbitant salaries to officers, superintendents, agents and employees of said defendant and of corporations controlled by said defendant, which salaries are now being paid to them. Said payments are unnecessary; because the services of many of such officers, superintendents, agents and employees are entirely unnecessary and should be dispensed with; and for the further reason that the said salaries and each of them are in excess of the reasonable values of the services of the persons to whom said salaries are paid and to each of them.

XI. One of the reasons alleged in said bill for the appointment of said receivers is: that the entire railroad system of the said defendant may otherwise be broken up by levies, executions and otherwise. The said claim is not made in good faith and is entirely untrue and unfounded, for the following reasons amongst others: All the lines of railroads operated by said defendant in the Borough of Manhattan, and upon information and belief, all such in the Borough of Bronx, except that hereinafter described, were obtained by said defendant under a lease or contracts from the Metropolitan Street Railway Company, a corporation of the State of New York, which had the right to the possession and control of the same, and which is fully able to operate them and each of them. In case said lease and contracts should be broken and cancelled and the property thereby covered be restored to the said Metropolitan Street Railway Company, there will be no interruption in the operation of the said lines.

XII. It is alleged in said bill that by the terms of said lease the said lessor can terminate the same upon the expiration of twelve (12) months from a demand for rent and a default in payment thereof; but your petitioner charges, upon information and belief, that by the true terms and construction of said lease, said lessor may obtain possession of the demised premises and property through the Courts of the State of New York immediately upon a default in the payment of rent, unless prevented by said suit. Your petitioner refers to the said lease and demands that the said defendant may be obliged to produce the same upon the hearing of this petition.

XIII. Your petitioner is informed and believes and avers; that the only street railway now owned by the said defendant, the New York City Railway Company, is a line about two miles long in the Borough of Bronx, upon which only three (3) or four (4) cars are run, and in connection with which there is no other property, except a car barn; and that this appears in the testimony taken before the said Public Service Commission. Said railroad is of little importance. Upon information and belief; that it is not now operated in connection with said system; that on the contrary the said railway company refuses to give the transfers to passengers upon said roads, from said roads to street railways in the said Borough of Manhattan.

XIV. Your petitioner is informed and believes and charges that all other property now in the possession of the said defendant, except money, books and papers, is property of which it only has a leasehold interest, and is property upon which no levy can be made by execution nor by attachment; that the lessor of said property is amply able to operate the same as a unit, and that it formerly did so; that said lessor has not applied for a receiver; that all of said property is covered by mortgages; that said

mortgagees have not applied for a receiver; and that allegations in said bill that there is danger of interruption of the operation of said railroads by the levy of executions are untrue.

XV. Your petitioner further avers, upon information and belief; that a large amount of the said lines covered by said lease are parallel and competing lines of railroads which the said Metropolitan Street Railway Company and said defendant acquired the possession and control of through contracts, which are in violation of the laws of the State of New York and of the public policy of the State of New York as expressed in the statutes of the State and of the Courts thereof and of a recent decision of this Court, rendered by Judge HOLT; and that they are also in conflict with the public policy of the United States, as expressed in its statutes and the acts of its executive; and that public policy will not be promoted by the continuance of the operation of said railroads as a single system. Amongst other such parallel and competing lines are the lines on the Second Avenue; on the Third Avenue; and on Broadway; on the Seventh Avenue; on the Sixth Avenue; on the Eighth Avenue; on the Ninth Avenue and on two or more of said avenues.

XVI. Your petitioner further alleges, upon information and belief, that the said defendant is perfectly solvent, except for its liability upon said lease, and that the said lease is invalid and illegal; because the same tends to promote a monopoly, in violation of the statutes of the State of New York, and because the same was procured through fraud, and for other reasons; and that defendant's liability upon said lease is guaranteed by another corporation.

XVII. The said receivers have already appointed, as superintendent of the said railway system, one

Vreeland, who is the president of the defendant, and who is one of the persons responsible for the condition of affairs which are the foundation of the application for said receivership. Your petitioner is informed and believes and charges, that the said receivers have employed almost all the other officers and agents and attorneys of the said defendant ; that the result of said receivership has been to continue in control of the property of the said defendant the persons who were instrumental in bringing about said state of facts, and who are interested in concealing wrongdoing on their part, and who are anxious for further opportunities for wrongdoing on their part ; and that it will be impossible for said receivers, so long as said persons are engaged in their employ, to ascertain the extent of the wrongdoing which has been previously committed and which will continue on the part of the persons thus retained in their employ.

XVIII. The said defendant is not engaged in interstate, nor in international commerce, nor in commerce with the Indian tribes.

XIX. There is no matter in dispute in said suit which exceeds the sum of Two Thousand ($2,000.00) Dollars. There is no matter in dispute in said suit which exceeds the value of Two Thousand ($2,000.00) Dollars. There is no matter of any sort in dispute in said suit.

XX. The said suit was instituted by collusion between the complainants and the defendant to the same, and this Court had and has no jurisdiction of said suit. The order for the appointment of said receivers was obtained by collusion between the parties to said suit and by the misrepresentation in said pleadings, to the Judge who signed said order, of material facts affecting the application for the same, and by the suppression from said Judge, of material facts which affected said application. Neither this Court, nor any

Judge thereof, had any jurisdiction to make said order, and said order was made by the learned Judge who signed the same without any explanation to him of the objects of said suit.

XXI. Upon information and belief: that this continuance by this Court of jurisdiction over said suit in equity and the continuance of said receivership will be a violation of the Constitution of the United States, which provides in the Seventh Amendment of the same: that "in suits at common law, where the value in controversy shall exceed Twenty Dollars, the right of trial by jury shall be preserved;" and also a violation of other parts of the Constitution of the United States; and also a violation of Section 723 of the Revised Statutes of the United States; which provides: that "suits in equity shall not be sustained in either of the Courts of the United States in any case where a plain, adequate and complete remedy may be had at law and of other Statutes of the United States;" and that the said appointment of said receivers in a case in which the complainants are not judgment creditors and hold a claim, which can be maintained at common law, and is not purely equitable, and they are not lienors, is without lawful authority.

WHEREFORE your petitioner prays that an order may be made dismissing said bill in equity for fraud, collusion and want of jurisdiction and setting aside said order appointing said receivers; or in case said application is denied, that an order may be made striking out from said order, the provisions to which reference is hereinbefore made, and by inserting in said order, as a condition precedent to the appointment of said receivers, that all debts and liabilities of said defendant for personal injuries and for causing the death of human beings, whether the same have been reduced to judgment or not, shall have a preference over all other claims upon the distribution of the assets of said defendant; and that your petitioner may have such

other and further relief in the premises as may be just, together with his costs.

JOSEPH KONRAD,
Individually and as Administrator of
Paul Planovsky, deceased.

ROGER FOSTER,
Solicitor for Petitioner,
35 Wall Street,
New York.

ROGER FOSTER,
Of Counsel.

COUNTY OF NEW YORK, ss:

JOSEPH KONRAD, being duly sworn, deposes and says: I reside in the City, County and State of New York and I am the petitioner above named. The foregoing petition is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe the same to be true.

I hereby incorporate the said petition into this my affidavit to the same effect as if the same were herein stated specifically and at length.

"JOSEPH KONRAD."

Sworn to before me this 3rd day of October, 1907.

EMIL KISS,
Notary Public,
New York County.

(Notarial Seal).

Filed 28th October, 1897.

Exhibit N3.

Amendment to Petition of Joseph Konrad for Leave to Intervene.

CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and Others, Complainants, AGAINST THE NEW YORK CITY RAILWAY COMPANY, the Original Defendant, and THE METROPOLITAN STREET RAILWAY COMPANY, Intervening Defendant.	In Equity.

And now comes Joseph Konrad, individually and as administrator of Paul Planovsky, deceased, and he makes and files this his amendment to the petition of intervention heretofore made and presented to the Court and filed herein.

He adds to the prayer of said petition said specific prayer: "And that your petitioner individually and as administrator of the estate of Paul Planovsky, deceased, may be allowed to intervene in the said suit on behalf of himself, individually and as such administrator as aforesaid, and on behalf of all other judgment creditors of the defendant, The New York City Railway Company, who may come in and contribute to the defense of this suit.

And your petitioner will ever pray, etc.

ROGER FOSTER,
Solicitor and attorney for petitioner,
35 Wall Street,
New York.

Filed 28th October, 1907.

Exhibit N4.

Petition of Daniel Gallagher and Francis S. Reisenberg for Leave to Intervene.

CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and others, Complainants, AGAINST THE NEW YORK CITY RAILWAY COMPANY, the Original Defendant, and THE METROPOLITAN STREET RAILWAY COMPANY, Intervening Defendant.	In Equity.

TO THE HONORABLE THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

The joint and several petition of Daniel Gallagher and Francis S. Reisenberg, residents and citizens of the City and County of New York, and each of them, respectfully shows to the Court:

I. Your petitioners are, and each of them is, a creditor of the intervening defendant, The Metropolitan Street Railway Company, because of personal injuries and damages caused to each of your petitioners by negligence of the said Railway Company. Actions to recover damages for personal injuries have been brought by each of your petitioners and are now pending in the Supreme Court of the State of New York undetermined. The defendant, The New York City Railway Company, by a lease dated on or about February 14th, 1902,

wherein and whereby it acquired a leasehold interest in the street railroads then operated by said Metropolitan Street Railway Company, promised to pay all judgments for damages for personal injuries recovered against said Metropolitan Street Railway Company.

II. Heretofore, on or about September 24th, 1907, a bill in equity was filed in the Clerk's office of this Court by the above named complainants against the above named defendant, The New York City Railway Company, in which on said day a receiver of the property of said New York City Railway Company was appointed. Subsequently, on or about October 1st, 1907, the said Metropolitan Street Railway Company intervened in said suit, by an order of this Court, made upon the petition of said last named railway company, then filed, to which the complainants and the original defendant consented; and on said date said receivership was extended to the properties of said Metropolitan Street Railway Company. Both of said orders appointing said receivers enjoined all persons whomsoever from interfering in any way whatsoever with the possession or management of any part of said property over which said receivers were appointed. Said last mentioned order contained a provision that "any party in interest may apply for direction". Subsequently, on or about October 9th, 1907, an order was made herein continuing said receivership during the continuance of said suit. On or about said date, a paper purporting to be a bill in equity was filed by the Morton Trust Company, which claimed to be a mortgagee of the property of the said Metropolitan Street Railway Company, and which prayed the appointment of a receiver of said property, although said mortgage was not yet due by its terms. On the same day an order was made extending said receivership for the benefit of said Morton Trust Company. All the said parties above named, including your petitioners, except the original complainants to this suit, are, and each of them is, and at all times herein mentioned have been, citizens of the State of New York.

III. On or about October 7th, 1907, one Joseph Konrad, individually and as administrator of Paul Planovsky, deceased, presented his verified petition to this Court praying leave to intervene in the said suit above entitled. Your petitioners hereby refer to and incorporate in this their petition each of the allegations in the said petition of said Joseph Konrad with the same force and effect as if the same were hereinafter repeated specifically and at length.

IV. That said suit above entitled was collusive. The said suit was brought by the said complainants at the request of the defendant, The New York City Railway Company, for the purpose of procuring the said receivership, in order to evade the operation of the statutes of the State of New York, and to shield persons in control of said two defendants from actions in the State Courts, and in order to impede your petitioners and other creditors of said two railway companies from collecting their claims, and for stock jobbing purposes, and in order to compel a reorganization, at the terms proposed by those in control of said defendants, of the assets and claims of all persons interested in the property of said defendants, and for the purposes set forth in said Konrad's petition.

WHEREFORE, your petitioners, and each of them, pray leave to intervene in the said suit; and that the orders granting said receiverships and injunctions be set aside; and that your petitioners may have such other and further relief in the premises as may be just; and your petitioners will ever pray, &c.

DANIEL GALLAGHER,
FRANCIS S. REISENBERG,
Petitioners.

By ROGER FOSTER,
their attorney and solicitor,
35 Wall Street,
New York.

COUNTY OF NEW YORK, ss. :

FRANCIS S. REISENBERG, being duly sworn, deposes and says: The foregoing petition is true to my own knowledge except as to the matters therein stated to be alleged upon information and belief and as to those matters I believe the same to be true.

"FRANCIS S. REISENBERG."

Sworn to before me this 25th day of October, 1907.

"E. D. H. CARLETON"
Notary Public,
Kings County,
New York County.

(S. L.)

Cert. N. Y. Co.

Filed 28th October, 1907.

Exhibit N5.

Affidavit of John V. W. Reynders.

UNITED STATES CIRCUIT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY, Complainants, AGAINST THE NEW YORK CITY RAILWAY COMPANY, Defendant.	In Equity.

STATE OF PENNSYLVANIA,
County of Dauphin,
MIDDLE DISTRICT OF PENNSYLVANIA, } ss.

JOHN V. W. REYNDERS being duly sworn, says: I am the Vice-President of the complainant, the Pennsylvania Steel Company; I have read the affidavit of Joseph Konrad, verified October 3rd, 1907.

The allegation that no subpœna has been issued upon the bill of complaint in this cause is an error; that on the contrary the subpœna was issued and served before the answer was filed.

I am informed and believe that none of the statements made in said affidavit in regard to the order of September 24th, 1907, appointing receivers herein that said order contained a number of extraordinary provisions, that provisions therein were not observed by the Judge signing the same at the time he signed said

order, that the powers given therein to the receivers are extraordinary and that they illegally vest in the receivers the power to make illegal preferences is correct.

I deny that one of the objects of the suit or of the application for the receivership was or is to delay the trial of the suits mentioned in paragraph four of said affidavit, or of any other suits, or to avoid the payment of the claims which are the foundation of such suits, or any other claims; I deny that it was the purpose of the application for the receivership to impede the further examination into the books and papers of the defendant New York City Railway Company by the Public Service Commission or in any other way to hinder and impede said Commission, and I deny that such application was made for stock jobbing purposes or to promote speculation in the stock of said defendant or of any other corporation, or to procure the continuance of the payments of large, excessive or exorbitant salaries to officers, superintendents, agents or employees of defendant or of corporations controlled br defendant or for any wrongful purpose or for any wrongful object.

I deny that any counsel fees have been paid to the counsel or to the solicitors for the complainants out of the funds of said defendant or by persons in control or in any way connected with the defendant.

In regard to the statements in said affidavit to the effect that the suit does not involve any substantial dispute between the parties within the jurisdiction of the Court, I submit that such statements are merely deponent's conclusions from the facts which are before the Court and that they are not correct conclusions. The defendant was indebted to the complainants and refused to pay such indebtedness, and manifestly there was a controversy between them which is within the jurisdiction of this Court.

I admit that the suit was brought in this Court for the purpose of having this Court take jurisdiction of the suit, but I deny ab-

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solutely as to the Pennsylvania Steel Company, and on information and belief as to the Degnon Contracting Company, that there was any impropriety or collusion or anything else wrongful in the conduct of either of the complainants, and I allege that as non-residents of the State of New York, the complainants had under the laws of the United States, an absolute right to decide whether they would bring this suit in the Courts of the United States or in the Courts of the State of New York; I deny that the object of this suit is anything else than it appears to be on the face of the bill of complaint, viz.: the administration of the assets of the defendant in a proper Court having jurisdiction thereof; at the time of the beginning of this suit I believed, and I now believe, that this Court was the proper one in which the interests of complainants this suit should be instituted and this Court was therefore selected; I deny absolutely as to the Pennsylvania Steel Company all charges of collusion, or suppression of facts and all wrongdoing on the part of the complainant, the Pennsylvania Steel Company of any kind or nature, and I deny said charges on information and belief as to the Degnon Contracting Company.

(Signed) JOHN V. W. REYNDERS.

Subscribed and sworn to before me this 5th day of October, 1907.

WILLIAM C. ARMOR,
[SEAL] Notary Public,
Commission expires April 19th, 1911.

STATE OF PENNSYLVANIA, Dauphin County, } ss.:

I, JAMES H. WORDEN, Prothonotary of the Court of Common Pleas of Dauphin County, the same being a Court of Record, do hereby certify that William C. Armor, Esquire, was at time the annexed and foregoing affidavit was made an acting Notary Public in said

County and State, duly commissioned and qualified and authorized by law to administer oaths, take acknowledgments of deeds, etc.; that I am well acquainted with his hand writing and verily believe that the signature to the said affidavit is genuine, and further that the annexed instrument is executed and acknowledged according to the laws of the State of Pennsylvania.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Harrisburg this 5th day of October, 1907.

JAMES H. WORDEN,
Prothonotary.

[SEAL]

Filed 28th October, 1907.

Exhibit N6.

Affidavit of Charles E. Warren.

UNITED STATES CIRCUIT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and THE DEGNON CONSTRUCTION COMPANY,
Complainants,

AGAINST

NEW YORK CITY RAILWAY COMPANY,
Defendant.

STATE OF NEW YORK, }
County of New York, } ss. :

CHARLES E. WARREN, being duly sworn, says :

I. I am the Secretary of the defendant, New York City Railway Company. I have read a copy of the affidavit of Joseph Konrad purporting to have been verified October 3rd, 1907. I deny the allegation of said affidavit that no subpœna had been issued upon the bill of complaint in this cause, but on the contrary allege that the subpœna was issued and served upon an officer of the defendant company before the answer was filed.

II. I deny that any action taken by this defendaut in this cause was for the purpose of delaying the trial of any of the suits mentioned in paragraph four of said affidavit, or of any other suits or to avoid the payment of any of the claims imposed in such suits or to avoid or delay the payment of taxes in favor of the State of

New York or to delay or avoid the payment of lawful claims of any kind whatsoever.

III. I deny that any action taken by the defendant in this cause has been for the purpose of hindering or impeding the examination now being conducted by the Public Service Commission for the First Department, or for stock jobbing purposes or to promote speculation in the stock of any corporation or to continue the payment of large, excessive or exorbitant salaries to any of the officers or employees of the defendant corporation or for the purpose of carrying out any illegal or unlawful purpose.

IV. I deny that the defendant or any person on behalf of the defendant has paid or promised any counsel fees to the solicitors for the complainants to be paid out of the funds of this defendant or otherwise.

V. I deny absolutely the charges of collusion or bad faith contained in said affidavit, and allege that there can be no question as to the validity of the claims of each of the complainants or of the correctness of the allegations of the defendant's answer to the bill of complaint, and I deny that the purposes of the defendant in the action which it has taken in filing in this suit its answer admitting the allegations of the complaint and joining in the prayer of the complaint were any other than the purpose alleged in said answer.

(Signed) CHARLES E. WARREN.

Sworn to before me this 7th day of October, 1907.

KENNETH B. HALSTEAD,
Notary Public,
Kings County.

(SEAL)

Certificate filed in New York County.

Filed, 28th October, 1907.

Exhibit N7.

Affidavit of Nathaniel J. Haywood.

UNITED STATES CIRCUIT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY, Complainants, AGAINST THE NEW YORK CITY RAILWAY COMPANY, Defendant.	In Equity.

STATE OF NEW YORK,
County of New York,
SOUTHERN DISTRICT OF NEW YORK, } ss.

NATHANIEL J. HAYWOOD, being duly sworn, says: I am the Secretary of the complainant the Degnon Contracting Company. I have read the affidavit of Joseph Konrad, verified October 3rd, 1907. I deny that it was any object or purpose of this suit or reason therefor, or any object of the application for the appointment of said receivers, or the purpose of or the reason therefor, to delay the trial of the suits mentioned in paragraph four of the alleged petition incorporated in said affidavit, or any other suits, or to avoid the payment of the claims which are the foundation of such suits or any other claims; or to delay proceedings for collection of any taxes. I deny that it was the purpose of the suit or of the application for the

receivership to impede the further examination into the books and papers of the defendant, the New York City Railway Company by the Public Service Commission or in any other way to hinder or impede such Commission, and I deny that such application was made for stock jobbing purposes or to promote speculation in the stock of said defendant or of any other corporation or to procure the continuance of the payment of large, excessive or exorbitant salaries to officers, superintendents, agents or employees of the defendant or of corporations controlled by the defendant or for any wrongful purpose or with any wrongful object.

I deny that any counsel's fees have been paid to the counsel or solicitors of the complainants out of the funds of said defendant or by persons controlling or in any way connected with the defendant.

In regard to the statements in said affidavit to the effect that the suit does not involve any substantial dispute between the parties within the jurisdiction of the Court, I submit that such statements are merely deponent's conclusions from the facts which are before the Court and that they are not correct conclusions. The defendant was indebted to the complainants and refused to pay such indebtedness, and manifestly there was a controversy between them which is within the jurisdiction of this Court.

I admit that the suit was brought in this Court for the purpose of having this Court take jurisdiction of the suit, but I deny absolutely as to the Degnon Contracting Company and on information and belief as to the Pennsylvania Steel Company, that there was any impropriety or collusion or anything else wrongful in the conduct of either of the complainants, and I allege that as non-residents of the State of New York, the complainants had under the laws of the United States, an absolute right to decide whether they would bring this suit in the Courts of the United States or in the Courts of the State of New York; I deny that the object of this suit is anything else than it appears to be on the

face of the bill of complaint, viz; the administration of the assets of the defendant in a proper Court having jurisdiction thereof; at the time of the beginning of this suit I believed, and I now believe, that this Court was the proper one in which the interests of complainants this suit should be instituted and this Court was therefore selected; I deny absolutely as to the Degnon Contracting Company all charges of collusion, or suppression of facts and all wrongdoing on the part of the complainant, the Degnon Contracting Company of any kind or nature, and I deny said charges on information and belief as to the Pennsylvania Steel Company.

(Signed) NATHANIEL J. HAYWOOD.

Subscribed and sworn to before me this 7th of October, 1907.

EDWIN L. DUNBAR,
Notary Public,
New York County,
New York.

My commission expires March 30th, 1908.

Filed 28th October, 1907.

Exhibit O.

Order Denying the Petition of Daniel Gallagher and Others.

At a Stated Term of the Circuit Court of the United States for the Southern District of New York in the Post Office Building, New York City, on the 6th day of November, 1907.

Before HONORABLE E. HENRY LACOMBE, United States Circuit Judge.

PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY

AGAINST

THE NEW YORK CITY RAILWAY COMPANY.

IN THE MATTER

OF

The Application of DANIEL GALLAGHER and FRANCIS S. REISENBERG for leave to intervene.

Daniel Gallagher and Francis S. Riesenberg having presented a petition for leave to intervene in the above entitled suit in equity; now, after hearing Roger Foster, Esq., in support of said petition, and James Byrne, Esq., in opposition thereto, it is hereby

ORDERED that the said petitioners have leave to file said petition; and that the same hereby is directed to

be filed accordingly; and that the complainants herein have leave to file the affidavits presented in opposition to said petition; and that the same hereby are filed accordingly; and that the prayer of said petition be and the same hereby is denied.

Filed 6th November, 1907.

Exhibit P.

Decree Appointing Special Master to take Proof of Claims of Defendant Metropolitan Street Railway Company.

IN THE CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY,

AGAINST

NEW YORK CITY RAILWAY COMPANY ET AL.

And now, on this 18th day of November, 1907, this cause came on further to be heard upon the pleadings and the petition of Metropolitan Street Railway Company, verified the 1st day of October, 1907, to be made a party defendant herein, and upon all the proceedings had in the cause, whereupon, on further consideration thereof, the solicitors for all the parties being before the Court, it is

ORDERED, ADJUDGED AND DECREED as follows, namely: The Court finds that the defendant, Metropolitan Street

Railway Company, is insolvent and that its assets and property of every description constitute a fund in which the creditors of said defendant are interested, and that the assets of said corporation should be marshalled and the nature and extent of the rights, liens, equities and priorities of the several creditors thereof should be ascertained and decreed by the Court.

And it is further ORDERED, ADJUDGED AND DECREED that it be referred to William L. Turner, Esquire, heretofore appointed Special Master in this cause, to take proof of the amount of all claims and demands against the said Metropolitan Street Railway Company and to report the same to this Court with all convenient speed.

And it is further ORDERED, ADJUDGED AND DECREED that all claims and demands against the said defendant shall be presented to the said Special Master on or before the fifteenth day of January, 1908, and that said Special Master give public notice accordingly by publication twice in each week for a period of three weeks in at least two daily newspapers published in the City of New York to be selected by him, which said notice shall also contain a statement of the time and place of the first hearing before said Special Master.

And it is further ORDERED, ADJUDGED AND DECREED that Adrian H. Joline and Douglas Robinson, the Receivers heretofore appointed herein file their accounts with the said Special Master on the 10th day of January, 1908, covering the period from September 24th, 1907, to and including December 31st, 1907, and shall file their accounts every two months thereafter, and that said Special Master shall examine the same and report thereon to the Court from time to time.

And all other questions not hereby disposed of and determined are reserved for further adjudication.

Dated New York City, November 8th, 1907.

E. HENRY LACOMBE,

U. S. C. J.

Filed 9th November, 1907.

Exhibit Q.

Petition of Morton Trust Company.

IN THE CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER
OF
THE PETITION OF MORTON TRUST COMPANY.

TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK:

The petition of Morton Trust Company, a corporation organized and existing under the laws of the State of New York, alleges as follows:

I. Your petitioner is a corporation organized and existing under the laws of the State of New York.

II. At all times hereinafter mentioned Metropolitan Street Railway Company was and still is a corporation duly organized and existing under the laws of the State of New York.

III. Heretofore by its mortgage or deed of trust, dated March 21, 1902, the said Metropolitan Street Railway Company, in order to secure an issue of bonds not exceeding in the aggregate the principal sum of $65,000,000 at any time outstanding, payable April 1, 2002, with interest at the rate of 4% per annum, payable semi-annually on the first

days of April and October, did grant and convey unto Morton Trust Company as trustee all the street surface railroads and property owned by it, and all the street surface railroads and property held or operated by it as lessee under certain leases as in said mortgage or deed of trust more specifically described.

Said Metropolitan Street Railway Company thereafter and in accordance with the provisions of said mortgage or deed of trust, issued its bonds, secured by said mortgage, to the amount of $16,604,000.00, as your petitioner is informed and believes, and the same are now outstanding in the hands of *bona fide* owners and holders for value, and are, as your petitioner is advised, a lien upon the property of the said Metropolitan Street Railway Company described in said mortgage. For a particular statement of the terms and conditions of said mortgage, your petitioner prays leave to refer thereto.

IV. Said mortgage provides among other things, that the mortgagor should pay all amounts payable under any lease mortgaged thereby. Among the leases so mortgaged to your petitioner is the lease of the Third Avenue Railroad Company to the Metropolitan Street Railway Company dated April 13, 1900, under which a certain rental became due and payable by the Metropolitan Street Railway on October 13, 1907. The Metropolitan Street Railway County and its Receivers have failed to pay said rental, as your petitioner is informed and believes, and is in default thereunder and has thereby made default in the performance of the covenants and conditions to be performed by it under said mortgage.

Persons owning or representing, as your petitioner is informed, a large amount of bonds issued under and secured by said mortgage to your petitioner dated March 21, 1902, have requested your petitioner to institute judicial proceedings for foreclosure of said mortgage.

V. In a suit in this Court in which The Pennsylvania Steel Company and The Degnon Contracting Company were complainants and New York City Railway Company defendant by an order of this Court made on September 24, 1907, Adrian H. Joline and Douglas Robinson were appointed receivers of the New York City Railway Company and they duly qualified as such receivers and entered upon the possession of said property and are now acting as such receivers and as such are in possession of the property of the New York City Railway Company.

Thereafter and on or about October 1, 1907, the Metropolitan Street Railway Company on its petition, was made a party to said cause and Adrian H. Joline and Douglas Robinson were appointed receivers of the properties of Metropolitan Street Railway Company and thereafter they duly qualified as such receivers, and they are now both as receivers of the Metropolitan Street Railway Company and as receivers of the New York City Railway Company in possession of all the railroads, properties and franchises described in said mortgage to your petitioner, dated March 21, 1902.

Thereafter your petitioner filed its bill in this Court (due leave having been granted to it) against Metropolitan Street Railway Company, New York City Railway Company, Adrian H. Joline and Douglas Robinson as Receivers of New York City Railway Company, Adrian H. Joline and Douglas Robinson as Receivers of Metropolitan Street Railway Company, The Pennsylvania Steel Company and The Degnon Contracting Company, praying that the income and profits of the mortgaged property be applied in accordance with the provisions of said mortgage and thereafter and on or about October 9, 1907, by an order of this Court, said Adrian H. Joline and Douglas Robinson were appointed Receivers of the properties of the said Metropolitan Street Railway Company and they duly qualified as such and are now, both as Receivers of the said Metropolitan Street Railway Company and as Receivers of

the New York City Railway Company in possession of all the railroads, properties and franchises described in said mortgage to your petitioner dated March 21, 1902.

VI. Your petitioner is about to file in this Court a bill for the foreclosure of said mortgage dated March 21, 1902, and desires to make the said Adrian H. Joline and Douglas Robinson, who, as Receivers as aforesaid, are now in possession of said property embraced in said mortgage, parties thereto.

Your petitioner therefore prays that by an order of this Court it may be permitted to make the said Adrian H. Joline and Douglas Robinson parties to said bill to be filed by it, and it may have such other and further relief as may be just.

MORTON TRUST COMPANY,
By H. M. FRANCIS,
Secretary,
Petitioner.

(SEAL)

BRONSON WINTHROP,
Solicitor for Petitioner.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:
CITY AND COUNTY OF NEW YORK.

HARRY M. FRANCIS, being duly sworn, doth depose and say that he is the Secretary of Morton Trust Company, the petitioner named in the foregoing petition. That he has read the foregoing petition and knows the contents thereof and that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes the same to be true.

H. M. FRANCIS.

Sworn to before me this 8th day of November, 1907.

J. A. BRODERICK,
Notary Public,
N. Y. County.

(SEAL)

Filed 9th November, 1907.

Exhibit Q2.

Order Making Receivers Parties to Bill to Foreclose Mortgage.

THE CIRCUIT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of MORTON TRUST COMPANY.

And now comes the above named petitioner and files its petition, praying for leave to make Adrian H. Joline and Douglas Robinson heretofore appointed by this Court Receivers of Metropolitan Street Railway Company and of New York City Railway Company, parties to the bill to foreclose the mortgage or deed of trust, dated March 21, 1902, and executed by Metropolitan Street Railway Company to the petitioner as trustee, which bill is to be filed by the petitioner; on consideration whereof, it is on motion of Bronson Winthrop, Esq,, solicitor for said petitioner.

ORDERED that the prayer of said petition be granted, and that said petitioner have leave to make the said Adrian H. Joline and Douglas Robinson as Receivers of New York City Railway Company and said Adrian H. Joline and Douglas Robinson as Receivers of Metropolitan Street Railway Company parties to the said bill of foreclosure.

November 9th, 1907.

E. HENRY LACOMBE,
U. S. C. J.

Filed 9th November, 1907.

Exhibit R.

Bill of Foreclosure.

CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

MORTON TRUST COMPANY, Complainant, AGAINST METROPOLITAN STREET RAILWAY COMPANY, NEW YORK CITY RAILWAY COMPANY, ADRIAN H. JOLINE and DOUGLAS ROBINSON as Receivers of New York City Railway Company, ADRIAN H. JOLINE and DOUGLAS ROBINSON as Receivers of Metropolitan Street Railway Company, THE PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY, Defendants.	In Equity. Bill of Foreclosure.

TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK:

Morton Trust Company, a corporation organized and existing under the laws of the State of New York and a citizen of said State, brings this its bill against Metropolitan Street Railway Company, a corporation organized and existing under and by virtue of the laws of the State of New York and a citizen of said State, New York City Railway Company, a corporation

organized and existing under and by virtue of the laws of the State of New York and a citizen of said State, Adrian H. Joline and Douglas Robinson, both citizens of the State of New York, as receivers of said New York City Railway Company, said Adrian H. Joline and Douglas Robinson as Receivers of said Metropolitan Street Railway Company, The Pennsylvania Steel Company, a corporation organized and existing under the laws of the State of Pennsylvania and a citizen of said State, and The Degnon Contracting Company, a corporation organized and existing under the laws of the State of New Jersey and a citizen of said State; and thereupon your orator complains and says as follows:

I. Your orator is a corporation duly organized and existing under and by virtue of the laws of the State of New York and a citizen of said State.

II. On information and belief, the defendant Metropolitan Street Railway Company (hereinafter in this bill called the Metropolitan Company) is a corporation organized and existing under the laws of the State of New York and a citizen of said State, having been organized by a merger and consolidation at divers times of Houston, West Street & Pavonia Ferry Railroad Company, Broadway Railway Company, South Ferry Railroad Company, The Metropolitan Crosstown Railway Company, The Lexington Avenue & Pavonia Ferry Railroad Company and The Columbus and Ninth Avenue Railroad Company, all of said companies having been street surface railroad companies organized and existing under the laws of the State of New York.

On information and belief, the defendant New York City Railway Company (hereinafter in this bill called the New York Company) is a corporation organized and existing under the laws of the State of New York and a citizen of said State. Said defendant was so organized under the name and style of "Interurban

Street Railway Company" and subsequently and pursuant to proceedings duly had, changed its name to "New York City Railway Company."

On information and belief, the defendant The Pennsylvania Steel Company is a corporation duly organized and existing under the laws of the State of Pennsylvania, and a citizen of said State, and the defendant The Degnon Contracting Company is a corporation duly organized and existing under the laws of the State of New Jersey and a citizen of said State.

III. Heretofore and prior to March 21, 1902, the defendant Metropolitan Company in the exercise of its powers under the laws of the State of New York, and in accordance with resolutions duly passed by its board of directors and by its stockholders at respective meetings thereof duly called and held, duly authorized the issue of a series of bonds to be executed under its corporate seal and attested by the signatures of its president or one of its vice-presidents, and attested by its secretary or an assistant secretary, and to be issued to an amount not exceeding in the aggregate the principal sum of sixty-five million dollars ($65,000,000) at any one time outstanding; said bonds to be either coupon or registered, the coupon bonds bearing date April 1, 1902, and the registered bonds bearing date at the time of their respective issue; by the terms of which bonds the Metropolitan Company promised to pay, in the case of coupon bonds, to the bearer thereof, and, in the case of registered bonds, to the registered owner thereof or his assigns, at the office or agency of the Metropolitan Company in the City of New York on the first day of April in the year 2002, the sum of one thousand dollars ($1,000) in the case of coupon bonds and the sum of one thousand dollars ($1,000) or multiples thereof in the case of registered bonds, gold coin of the United States of America, of or equal to the then standard of weight and fineness, and to pay interest thereon, in the case of coupon bonds, from April 1, 1902, and, in the

case of the registered bonds, from the first day of April or October, as the case might be, next preceding the date thereof, payable at its said office in like gold coin, semi-annually on the first days of April and October in each year, in the case of coupon bonds, upon presentation and surrender, as they might severally mature, of the interest coupons thereto annexed, and, in the case of registered bonds, to the registered owner thereof or his assigns. The form and tenor of said bonds are set forth at large in the mortgage hereinafter referred to.

IV. On or about March 21, 1902, the Metropolitan Company being thereunto duly authorized by the action of its board of directors and with the consent of stockholders owning at least two-thirds of the entire capital stock of the Metropolitan Company, such stock having been represented and voted upon in person or by proxy at a special meeting of the stockholders duly called for that purpose, in pursuance to the statute in such case made and provided, and with the consent of the Board of Railroad Commissioners of the State of New York, the consent of said stockholders evidenced by a sworn certificate of the vote of said meeting and the consent of said Board, both in due form, having been contemporaneously filed and recorded in accordance with law in the office of the Register of the County of New York in which County the Metropolitan Company had its principal place of business and wherein its property was situated, duly made, executed and delivered to your orator, as trustee, its certain mortgage or deed of trust dated on that day, wherein and whereby in order to secure the payment of the principal and interest of all such bonds at any time issued and outstanding and to secure the performance and observance of all the covenants and conditions in said mortgage contained, it granted, bargained, sold, released, conveyed, assigned, transferred and set over unto your orator, as trustee, its successors and assigns forever, all and singular, the railroads, railroad routes,

estates, leaseholds, properties, rights, privileges and franchises described as follows, to wit:

I.

STREET SURFACE RAILROADS IN THE COUNTY OF NEW YORK, CITY OF NEW YORK, AND STATE OF NEW YORK, OWNED BY THE METROPOLITAN STREET RAILWAY COMPANY, DESCRIBED AS FOLLOWS:

HOUSTON, WEST STREET AND PAVONIA FERRY, OR AVENUE C LINE.

Commencing at the intersection of Duane Street with West Street, thence through and along Duane Street with a double track to Greenwich Street, thence through and along Greenwich Street with a single track to Charlton Street, thence through and along Charlton Street with a single track to Prince Street, thence through and along Prince Street with a single track to Bowery, thence upon and across the Bowery with a single track to Stanton Street, thence through and along Stanton Street with a single track to Pitt Street, thence through and along Pitt Street with a single track to Avenue C, thence through and along Avenue C, with a single track to Third Street, thence through and along Avenue C, from Third Street with a double track to the northern extremity of the said Avenue C, thence through and along Third Street, connecting with the double track in Avenue C, with a single track to First Avenue, thence through and along First Avenue with a single track to East Houston Street, thence through aed along East Houston Street with a single track to the Bowery, thence upon and across the Bowery with a single track to West Houston Street, thence through and along West Houston Street, with a single track to Washington Street, thence through and along Washington Street with a single track to Duane Street; thence through and along Duane Street, connecting with the double track to the place of beginning, being the route

described in Chapter 625 of the Laws of 1868 of the State of New York.

Extension on Avenue C Through Seventeenth Street, Etc.

From Avenue C through Seventeenth and Eighteenth Streets, by single track in each street, to Avenue A, thence through and along Avenue A, by double track to Twenty-third Street; thence through and along Twenty-third Street, by double ttack to First Avenue; thence through and along First Avenue, by double track, to Thirty-sixth Street; thence through and along Thirty-sixth Street, by single track, to Lexington Avenue; and also through and along Thirty-fifth Street, by single track, from First Avenue to Lexington Avenue; thence through and along Lexington Avenue, by single or double track, to Forty-second Street; thence through and along Forty-second Street by double track to Fourth Avenue. Also, by single track through and along Charlton Street, from Greenwich Street to West Street; and, by single track, through and along West Houston Street, from Washington Street to West Street; thence through and along West Street by double track, to Chambers Street. Also, through and along Tenth Street, connecting with the double track in Avenue C, by single track to Avenue D; thence through and along Tenth Street by double track to the East River. Also, connecting with the double track on Tenth Street through and along Avenue D, by single track, to Eleventh Street; thence through and along Eleventh Street, by single track, to and connecting with the double track on Avenue C, being the route described in Chapter 19 of the Laws of 1871 of the State of New York.

Chamber Street and Grand Street Ferry Line.

Commencing at the foot of Roosevelt Street, East River, thence through, upon and along South Street, with

double tracks to James Slip ; thence through, upon and along James Slip, with double tracds, to New Chambers Street ; thence through, upon and along and New Chambers Street to Chatham Street, with double tracks ; thence across Chatham Street to Chambers Street, with single track ; thence through, upon and along Chambers Street, with single track, to Pavonia Avenue Ferry, foot of Chambers Street, North River ; thence returning with single or double tracks, through, upon and along West Street to Duane Street ; thence through, upon and along Duane Street, with single track to and across Chatham Street to connect with the double tracks at New Chambers Street. Also from New Chambers Street, at Madison Street, through, upon and along Madison Street, with double tracks to Grand Street thence through, upon and along Grand Street, with single or double tracks to the ferry at the foot of Grand Street. Also, from Madison Street, at Jackson Street, through, upon and along Jackson Street, with double or single tracks to Cherry Street ; thence through, upon and along Cherry Street, with double or single tracks to the East River ; thence through, upon and along East Street, with double or single tracks, to connect with the tracks at the foot of Grand Street, East River, being the route described in the resolution of the Common Council of the City of New York, adopted on December 30, 1884.

Broadway Surface Line.

Commencing at the southerly end of Broadway near the Battery and running thence with double tracks through and along Broadway, and across Fourteenth Street to and along Union Square to a point at or near the intersection of Fifteenth Street and West Union Square, being the route described in the resolution of the Common Council of the City of New York, adopted December 5, 1884.

South Ferry Line.

Commencing at the northerly side of Vesey Street; thence through, upon and along Church Street, with double track to Morris Street; thence through, upon and along Morris Street, with a double track to Greenwich Street; thence through, upon and along Greenwich Street, with a double track to Battery Place; thence through, upon and along Battery Place, with a double track to State Street; thence through, upon and along State Street with a single track, to Whitehall Street; thence through, upon and along Whitehall Street, with a single track to the South Ferry; returning through, upon and along Whitehall Street to Bowling Green; thence through, upon and along the southerly side of Bowling Green to connect with double tracks at Battery Place, being the route described in Chapter 508 of the Laws of 1874 of the State of New York.

Metropolitan Cross-Town Line.

Commencing upon East Street, at or near the Grand Street Ferry, and running thence through, upon and along East Street, with a double track to Delancey Slip or Street; thence through, upon and along Delancey Street, with a double track, to the Bowery; thence through, upon and across the Bowery to Spring Street; thence through, upon and along Spring Street, with a double track, to South Fifth Avenue; thence through, upon and along South Fifth Avenue, with a double track, to Fourth Street; thence through, upon and along Fourth Street, with a double track to Macdougal Street; thence through, upon and along Macdougal Street, with a double track, to Waverly Place; thence through, upon and along Waverly Place, to Christopher Street, with a double track; thence through and along Waverly Place, from Christopher Street to Bank Street with a single track; thence through, upon and along Bank Street, with a

double track to Greenwich Avenue; thence through, upon and along Greenwich Avenue, with a double track, to Thirteenth Street and Horatio Street; thence through, upon and along Thirteenth Street and Horatio Street, with a single track, to Eighth Avenue; thence through, upon and across Eighth Avenue to Thirteenth Street; thence through, upon and along Thirteenth Street, with a double track, to Thirteenth Avenue; thence through, upon and along Thirteenth Avenue, with a double track, to Fourteenth Street, being the route described in the resolution of the Common Council of the City of New York, adopted December 24, 1889.

Lexington Avenue and Pavonia Ferry Line.

Commencing at Forty-second Street, in the City of New York, at a point of connection with the tracks of the Houston, West Street and Pavonia Ferry Railroad Company, at the junction of said street with Lexington Avenue; thence on and over said Lexington Avenue, with double tracks, to Harlem River, with further construction and extensions from the junction of One hundred and Sixteenth Street and Lexington Avenue, through One hundred and Sixteenth Street to Morningside Park and to the East River, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Columbus Avenue and Ninth Avenue Line.

Commencing in Columbus Avenue, in the City of New York, at or near Sixty fourth Street, there to connect with the existing double track of the Ninth Avenue Railroad Company in said avenue; thence running across the surface of the Boulevard and upon, along and over the surface of Columbus Avenue (formerly Ninth Avenue) with double tracks to One hundred and tenth Street; also from Columbus Avenue, with double tracks through and along One

hundred and sixth Street to Amsterdam Avenue, to connect with the existing double track in Amsterdam Avenue (formerly Tenth Avenue), then owned by the Ninth Avenue Railroad Company, being the route described in the resolution of the Common Council of the City of New York, adopted October 10, 1892.

Fort Lee Ferry Extension.

Commencing at the intersection of One hundred and twenty-fifth Street and Amsterdam Avenue (formerly Tenth Avenue), running thence westerly, through One hundred and twenty-fifth Street to the Boulevard, thence northerly through the Boulevard to One hundred and thirtieth Street and thence westerly, through One hundred and thirtieth Street westerly to Twelfth Avenue, to a point on the west side of said avenue at or near Manhattan Street and at or near Fort Lee Ferry, being the route described in the resolution of the Common Council of the City of New York, adopted December 19, 1893.

Columbus and Ninth Avenue Railroad Connection and Extension on One Hundred and Ninth Street.

Commencing at the intersection of Columbus Avenue at One hundred and ninth Street, and connecting there by suitable curves, switches and appliances with the road of the Columbus and Ninth Avenue Railroad Company, running thence easterly with double tracks, through, upon and along One hundred and ninth Street to Manhattan Avenue; thence northerly, upon Manhattan Avenue, with double tracks, to the southerly side of Cathedral Parkway (formerly One hundred and tenth Street), there to unite with an extension or branch of the Metropolitan Street Railway Company, being the route described in the resolution of the Common Council of the City of New York, adopted September 18, 1894.

METROPOLITAN STREET RAILWAY CONNECTION AND EXTENSION ON MANHATTAN STREET.

Commencing at the intersection of Manhattan Avenue and One hundred and sixteenth Street, and connecting there by suitable curves, switches and appliances with the road of the Metropolitan Street Railway Company, running thence southerly, with double tracks, through, upon and along Manhattan Avenue to the southerly side of Cathedral Parkway (formerly One hundred and tenth Street), there to unite with an extension or branch of the Columbus and Ninth Avenue Railroad Company, being the route described in the resolution of the Common Council of the City of New York, adopted September 18, 1894.

HOUSTON, WEST STREET AND PAVONIA FERRY CONNECTION AND EXTENSION ON RIDGE STREET AND MONTGOMERY STREET.

Commencing at the intersection of Houston Street and Avenue C in the City of New York, connecting there by suitable curves and appliances with the route of the Houston, West Street and Pavonia Ferry Railroad Company, running thence through, upon and along Houston Street over the single track in said Street of the road of the Forty-second Street and Grand Street Ferry Railroad Company to Ridge Street; thence (with suitable curves and appliances at or near Ridge Street) through, upon and along Ridge Street with a single track to the said point of union, and by the construction, maintenance and operation of an extension or branch of the said railroad formerly of the Chambers Street and Grand Street Ferry Railroad Company, commencing at the intersection of Montgomery Street and Madison Street, connecting there by suitable curves and applances with the said road formerly of the Chambers Street and Grand Street Ferry Railroad Company, running thence with a single track, through, upon and along Mont-

gomery Street to Division Street; thence through, upon and across Division Street to Ridge Street; thence through, upon and along Ridge Street with a single track to the said point of union, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

HOUSTON, WEST STREET AND PAVONIA FERRY RAILROAD CONNECTION AND EXTENSION ON PITT STREET AND GOUVERNEUR STREET.

Commencing at the intersection of Third Street and Avenue C, connecting there by suitable curves and appliances with the tracks of the Houston, West Street and Pavonia Ferry Railroad Company, and running thence with an additional single track through, upon and along Avenue C to and across Houston Street to Pitt Street, there to connect by suitable curves and appliances with the existing single track of the Houston, West Street and Pavonia Ferry Railroad Company in Pitt Street, and running thence through, upon and along Pitt Street over the said single track in said street to Stanton Street; thence (with suitable connections and curves at Stanton Street) upon and across Stanton Street with a single track; thence through, upon and along Pitt Street to said point of Union; and by the construction, maintenance and operation of an extension or branch of the railroad formerly of the Chambers Street and Grand Street Ferry Railroad Company, commencing at the intersection of Gouverneur Street and Madison Street, connecting there by suitable curves and appliances with the said road formerly of the Chambers Street and Grand Street Ferry Railroad Company, running thence, with a single track, through, upon and along Gouverneur Street to and across Grand Street; thence with a single track through, upon and along Pitt Street to said point of union, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Metropolitan Cross-Town Connection and Extension on West Third Street.

Commencing at the intersection of South Fifth Avenue and West Third Street, connecting there by suitable curves and attachments with the road of The Metropolitan Cross-Town Railway Company, and running thence westerly with double tracks through, upon and along West Third Street to a point of union with an extension or branch of the railroad of the Sixth Avenue Railroad Company, at or near Sullivan Street, being the route described in the resolution of the Common Council of the City of New York adopted September 29, 1892.

Metropolitan Cross-Town Connection and Extension on Broome, Sullivan and Watts Streets.

From a connection with the route of The Metropolitan Cross-Town Railway Company on South Fifth Avenue, at the intersection of Broome Street, by suitable curves and appliances thence with double tracks through, upon and along Broome Street to Sullivan Street; thence through upon and along Sullivan Street with double tracks to Watts Street; thence through, upon and along Watts Street with double tracks to a union with the route and road of the Houston, West Street and Pavonia Ferry Railroad Company, then on West Street, and to connect also with Desbrosses Street Ferry, said branch over said streets to said union of the routes or road of The Metropolitan Cross-Town Railway Company when built on South Fifth Avenue to Broome Street, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Metropolitan Cross-Town Connection and Extension on South Fifth Avenue.

Commencing at South Fifth Avenue and Spring Street, connecting there by suitable curves and appliances with the existing road of the Metropolitan Cross-Town Railway Company, and running thence southerly with double tracks through, upon and along South Fifth Avenue to Broome Street, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Houston, West Street and Pavonia Ferry Connection and Extension on Lexington Avenue.

Along and over Lexington Avenue from Twenty-seventh street to Thirty-fifth Street by double track, and by single track from Thirty-fifth Street to Thirty-sixth Street, being the route described in the resolution of the Common Council of the City of New York, adopted September 29, 1892.

Metropolitan Street Railway Connection and Extension on West Broadway.

Commencing at the intersection of West Broadway and Duane Street, and connecting there by suitable curves, switches and appliances with the Metropolitan Street Railway Company's existing tracks in said Duane Street, running thence southerly in or upon West Broadway, with double tracks to Chamber Street, and thence southerly with double tracks, in or upon West Broadway (a portion of which was formerly College Place), to Vesey Street, there to connect with a double track extension or branch of the railroad and route of the Central Park, North and East River Railroad Company, being the route described in the resolution of the Common Council of the City of New York, adopted April 14, 1896.

II.

REAL ESTATE OWNED BY THE METROPOLITAN STREET RAILWAY COMPANY, BEING THE FOLLOWING DESCRIBED PIECES AND PARCELS OF LAND WITH THE BUILDINGS AND IMPROVEMENTS THEREON, SITUATE, LYING AND BEING IN THE COUNTY OF NEW YORK, CITY OF NEW YORK, AND STATE OF NEW YORK.

A. REAL ESTATE NOT SUBJECT TO THE METROPOLITAN STREET RAILWAY COMPANY'S GENERAL AND COLLATERAL TRUST MORTGAGE.

LEXINGTON AVENUE AND THIRTY-THIRD STREET PROPERTY.

All that certain plot, piece or parcel of land with the buildings thereon erected, situate, lying and being in the City and County of New York, bounded and described as follows: Beginning at a point formed by the intersection of the easterly line of Park (formerly Fourth) Avenue, with the northerly line or side of Thirty-second Street; running thence northerly along the easterly side of Park Avenue, one hundred ninety-seven (197) feet six (6) inches to the southeasterly corner of Park Avenue and Thirty-third Street; thence easterly along the southerly side of Thirty-third Street, four hundred twenty-five (425) feet to the southwesterly corner of Thirty-third Street and Lexington Avenue, thence southerly along the westerly side of Lexington Avenue, one hundred forty-eight (148) feet one (1) inch; thence westerly parallel or nearly so with Thirty-third Street, forty-eight (48) feet four (4) inches; thence southerly and nearly parallel with Lexington Avenue, forty-nine (49) feet five (5) inches to the northerly side of Thirty-second Street, at a point distant forty-eight (48) feet four (4) inches westerly from the westerly side of Lexington Avenue; thence westerly along the northerly side of Thirty-second Street, three hundred seventy-six (376) feet

eight (8) inches to the point or place of beginning; being the same premises heretofore conveyed to The New York and Harlem Railroad Company by the following instruments, to wit: Deed from Mary Murray, dated January 8, 1849, and recorded in the office of the Register of the County of New York in Liber 518 of Conveyances, page 420; deed from Nathan Jackson and wife, dated February 22, 1849, and recorded in said Register's Office in Liber 558 of Conveyances, page 215; deed from John Alstyne, dated December 13, 1851, and recorded in said Register's Office in Liber 590 of Conveyance, page 226; deed from Henry Abell and wife, dated September 1, 1865, and recorded in said Register's Office, in Liber 947 of Conveyances, page 251; deed from Jesse A. Marshall and wife, John F. Marshall and William H. Wilkins and wife, dated June 1, 1875, and recorded in said Register's Office in Liber 1333 of Conveyances, page 51; deed from Peter S. Bogart and wife, dated December 10, 1849, and recorded in said Register's Office in Liber 537 of Conveyances, page 447, and which premises were conveyed by The New York and Harlem Railroad company to Oren Root, Junior, by deed bearing date September 6, 1899, and recorded in the office of the Register of the County of New York on September 11, 1899, in Block Series (Conveyances), Section 3, Liber 65, page 136, and indexed under Block Number 888, and Section 5, Liber 63, page 307, and indexed under Block Number 1497, and were conveyed by Oren Root, Jr., to the Metropolitan Street Railway Company by indenture dated September 22, 1899, subject to a mortgage made by the said Root to the Mutual Life Insurance Company, dated September 20, 1899, to secure the payment of the sum of $950,000 and interest.

85TH AND 86TH STREETS AND MADISON AVENUE PROPERTY.

Also, all those certain lots, pieces or parcels of land, with the buildings and improvements thereon, situate, lying and being in the City and County of New York,

bounded and described as follows: Beginning at a point formed by the intersection of the northerly side of Eighty-fifth Street and the westerly side of Madison Avenue, and running thence westerly along the nortyerly side of said Eighty-fifth Street, two hundred twenty (220) feet; thence northerly parallel with Madison Avenue two hundred four (204) feet four (4) inches, to the southerly side of Eighty-sixth street; thence easterly along the southerly side of Eighty-sixth Street, two hundred twenty (220) feet to the southwesterly corner of Eighty-sixth Street and Madison Avenue; and thence southerly along the westerly side of Madison Avenue two hundred four (204) feet four (4) inches to the point or place of beginning; being the same premises heretofore conveyed to The New York and Harlem Railroad Company by the following instruments, to wit: Deed from Webster Wagner and wife, dated November 5, 1891 and recorded in the office of the Register of the County of New York, in Liber 1923 of Conveyances, page 203; deed from George B. Heath, dated December 3, 1886, and recorded in said Register's Office, in Liber 1998 of Conveyances, page 468; deed from Clark R. Gavit, dated December 22, 1885, and recorded in said Register's Office in Liber 2273 of Conveyances, page 333; deed from Webster Wagner and wife, dated November 12, 1881, and recorded in said Register's office, in Liber 1912 of Conveyances, page 342; deed from Warren S. Crane, dated November 21, 1889, and recorded in said Register's Office, in Liber 2273 of Conveyances, page 331, and deed from James M. Gotendorf and others, dated August 12, 1885, and recorded in said Register's Office, in Liber 1912 of Conveyances, page 347; and which premises were conveyed by The New York and Harlem Railroad Company to Oren Root, Junior, by deed bearing date September 6, 1899, and recorded in the office of the Register of the County of New York on September 11, 1899, in Block Series (Conveyances), Section 6, Liber 65, page 136, and indexed under Block Number 888, and Section 5, Liber 63, page 307,

and indexed under Block Number 1497, and were conveyed by Oren Root, Jr., to the Metropolitan Street Railway Company by indenture dated September 22, 1899, subject to a mortgage made by the said Root to the Mutual Life Insurance Company dated September 20, 1899, to secure the payment of the sum of $950,00, and interest.

146TH STREET, 147TH STREET, LENOX AVENUE AND 7TH AVENUE PROPERTY.

All that certain lot, piece or parcel of land, situate, lying and being in the Twelfth Ward in the City of New York, bounded and described as follows: Beginning at a point on the westerly side of Fenox Avenue (formerly Sixth Avenue) at a point distant one hundred (100) feet north of the corner formed by the intersection of the northerly side of One hundred and forty-sixth Street with the westerly side of Lenox Avenue, running thence northerly along the westerly side of said Lenox Avenue to the corner formed by the intersection of the westerly side of Lenox Avenue and the southerly side of One hundred and forty-seventh Street, running thence westerly along the southerly side of One hundred and forty-seventh Street, to the corner formed by the intersection of the southerly side of One hundred and forty-seventh Street with the easterly side of Seventh Avenue, running thence southerly along the easterly side of said Seventh Avenue to the corner formed by the intersection of the easterly side of Seventh Avenue with the northerly side of One hundred and forty-sixth Street, running thence easterly along the northerly side of One hundred and forty-sixth Street to a point distant four hundred forty (440) feet westerly from the corner formed by the intersection of the northerly side of One hundred and forty-sixth Street with the westerly side of Lenox Avenue, (formerly Sixth Avenue), thence running northerly and parallel with the westerly side of Lenox Avenue aforesaid one hundred (100) feet, thence running eastwardly

and parallel with the northerly side of One hundred and forty-sixth Street four hundred forty (440) feet to the point or place of beginning; conveyed by indenture dated September 30, 1897, from The Metropolitan Traction Company of New York to the Metropolitan Street Railway Company and which indenture was recorded in the Office of the Register of the City and County of New York, on October 4, 1897, in Block Series (Conveyances) Section 7, Liber 48, page 99, and indexed under Block Number 2015 on the Land Map of the City of New York, and being part of the land which was conveyed to the Metropolitan Traction Company of New York by Charles D. Lane and Rosa G., his wife, by deed dated July 1, 1894, and recorded in the Office of the Register of the City and County of New York on July 17, 1894, in Block Series (Conveyances) Section 7, Liber 22, page 384, and indexed under Block Number 2015 on the land map of the City of New York, and being subject to a mortgage of $150,000, with 5 per cent. per annum given by John D. Crimmins to the Mutual Life Insurance Company, dated February 20, 1893, and recorded in the Office of the Register of the City and County of New York on February 20, 1893, in Block Series (Mortgages), section 7, Liber 23, page 301, and being also subject to the restrictions and covenants contained in a certain grant of the Mayor, Aldermen and Commonalty of the City of New York to Mary G. Pinckney, dated November 7, 1867, and recorded in the Register's Office of the City and County of New York, on November 15, 1867, in Liber 1041 of Conveyances, page 1, in so far as the same affects the said described premises.

Also that certain lot, piece or parcel of ground with the buildings thereon erected, situate, lying and being in the Twelfth Ward of the City of New York and bounded and described as follows: Commencing at the intersection of the northerly side of One hundred and forty-sixth Street with the westerly side of Lenox Avenue (Formerly Sixth Avenue), running thence northerly along the westerly side of Lenox Avenue

one hundred (100) feet or thereabouts ; running thence westerly and parallel with the northerly side of One hundred and forty-sixth Street four hundred forty (440) feet or thereabouts ; running thence southerly and parallel with the westerly side of Lenox Avenue one hundred (100) feet to the northerly side of One hundred and forty-sixth Street ; and thence easterly along the northerly side of One hundred and forty-sixth Street four hundred forty (440) feet or thereabouts to the point or place of beginning ; being a portion of the premises heretofore conveyed to the Metropolitan Traction Company of New York by Charles D. Land and Rose G., his wife, by deed dated July 1, 1894, and recorded in the Office of the Register of the City and County of New York in Block Series (Conveyances) Section 7, Liber 22, page 384, and indexed under Block Number 2015, and which premises were conveyed to the Metropolitan Street Railway Company by The Metropolitan Traction Company of New York by deed dated July 2, 1897, and recorded in said Register's Office on July 20, 1897, in Block Series (Conveyances), Section 7, Liber 47, page 241, and indexed under Block Number 2015 ; subject, however, to a mortgage made by Charles D. Lane and Rosa G., his wife, to John D. Crimmins, and recorded in Block Series (Mortgages), Section 7, Liber 38, page 298, and also subject to the restrictions and covenants contained in a certain grant from the Mayor, Aldermen and Commonalty of the City of New York to Mary G. Pinckney, dated November 7, 1867, and recorded on November 15, 1867, in the Office of the Register of the City and County of New York in Liber 1041 of Conveyances, page 1, in so far as the same affects the said described premises ; provided, however, that the property described under the heading "146th, 147th Street, Lennox Avenue and 7th Avenue property" is subject to the right, title and interest therein of the Sixth Avenue Railroad Company.

Dry Dock Street Property.

All that certain lot, piece or parcel of land, with the building thereon erected, situate, lying and being in the Eleventh Ward in the City of New York, bounded and described as follows: Beginning at a point on the westerly side of Dry Dock Street at the middle of the party wall distant southerly from the point or angle formed by the intersection of the westerly line of Dry Dock Street and the southerly line of Eleventh Street, ninety-four (94) feet nine and one-half (9½) inches or thereabouts running thence westerly parallel or nearly so with Eleventh Street and part of the way through a party wall eighty-four (84) feet, thence northerly and parallel or nearly so with Dry Dock Street twenty-two (22) feet, thence easterly parallel or nearly so with Eleventh Street eighty-four (84) feet to the westerly line of Dry Dock Street, thence southerly along the westerly line of Dry Dock Street Twenty-two (22) feet to the point or place of beginning; be the said dimensions more or less. Being the same premises conveyed to The Metropolitan Traction Company of New York by Joseph Branagan, by deed dated November 23, 1892, and recorded in the office of the Register of the City and County of New York on November 23, 1892, in Block Series (Conveyances) Section 2, Liber 14, page 444, and indexed under Block Number 380, and which were conveyed by The Metropolitan Traction Company of New York to the Metropolitan Street Railway Company by indenture dated September 15, 1897, and recorded in the office of the Register of the City and County of New York on September 28, 1897, in Block Series (Conveyances) Section 2, Liber 56, page 229, and indexed under Block Number 380.

Front Street Property.

All those three certain lots, pieces or parcels of land, with the buildings and improvements erected thereon, situate, lying and being in the City of New York, and

known as Numbers 13, 15 and 17 Front Street, which, taken together, according to a survey thereof made August, 1883, are bounded and described as follows: Beginning at the northeasterly corner thereof at a point in the southerly line or side of Front Street opposite the middle of a party wall and distant thirty-two (32) feet seven (7) inches westerly from the southwesterly corner of Front and Broad Streets, and running thence southwardly parallel or nearly so with Broad Street and along the middle of said party wall, one hundred five (105) feet one (1) inch to a point opposite a fence; thence westwardly along said fence and parallel or nearly so with Front Street eighteen (18) feet nine (9) inches to an angle in said fence; thence in a northwesterly direction and along said fence to another angle therein five (5) feet; thence again westwardly parallel or nearly so with Front Street and along said fence, the brick wall of a five-story building and another fence thirty-seven (37) feet four and one-half (4½) inches to the wall of a five story brick building; thence northwardly and along said wall to an angle therein twenty (20) feet; thence again westwardly along said wall three (3) feet six (6) inches to the middle of a party wall; thence northwardly along the middle of said party wall and parallel or nearly so with Moore Street seventy-nine (79) feet ten (10) inches to the southerly side of Front Street, and thence eastwardly along said southerly side of Front Street sixty-five (65) feet one half (½) inch to the point or place of beginning; that portion which is known as No. 13 Front Street being subject to an agreement made by Mulford Martin with Elias H. Herrick, dated May 28, 1840. Being the same property which was conveyed to The Metropolitan Traction Company of New York by John D. Crimmins by deed dated September 29, 1892, and recorded in the office of the Register of the City and County of New York on November 29, 1892, in Block Series (Conveyances), Section 1, Liber 10, page 472, and indexed under Block Number 4, and which was conveyed to the Met-

ropolitan Street Railway Company by deed dated September 11, 1896, and recorded in said Register's Office on September 28, 1897, in Block Series (Conveyances), Section 1, Liber 43, page 361, and indexed under Block Number 4.

NINTH AVENUE PROPERTY.

All those forty certain lots and parts of lots or gores of land, situate, lying and being in the City of New York, in the Twenty-second Ward of said city, which, taken together as one parcel, are bounded and described as follows, viz: Beginning at a point on the easterly side of line of Ninth Avenue which is distant sixty-five (65) feet northerly from the northerly line of Fifty-third Street; running thence northerly along said easterly line of Ninth Avenue one hundred thirty-five (135) feet ten (10) inches, to the southerly line of Fifty-fourth Street; thence easterly along said southerly line of Fifty-fourth Street, five hundred twenty five (525) feet and to a point distant two hundred seventy-five (275) feet westerly from the point of intersection of the southerly line of Fifty-fourth Street with the westerly line of Eighth Avenue; thence southerly on a line at right angles with the said southerly line of Fifty-fourth Street one hundred sixty-five (165) feet eleven and three eighths (11 3/8) inches; thence in a northwesterly direction eighty-one (81) feet two (2) inches, to a point distant thirty-eight (38) feet two (2) inches, north of Fifty-third Street; thence westerly eighty-two (82) feet to a point forty-nine (49) feet north of Fifty-third Street; thence westerly one hundred twenty nine (129) feet one (1) inch to a point distant fifty-two (52) feet north of Fifty-third Street; thence westerly one hundred forty-one (141) feet to a point distant fifty-one(51) feet eight inches (8) north of Fifty-third Street; thence westerly sixty-one (61) feet five (5) inches, to a point distant fifty-six (56) feet five (5) inches, north of Fifty-third Street; thence westerly thirty-one (31) feet four (4) inches to the easterly line

of Ninth Avenue at the point or place of beginning; together with all the buildings and erections now existing thereon; being part of the premises conveyed to John D. Crimmins by The Eighth Avenue Railroad Company, a corporation created and existing under the laws of the State of New York, by deed dated July 19, 1892, and recorded in the Office of the Register of the City and County of New York on August 3, 1892, in Block Series (Conveyances) Section 4, Liber 17, page 78; and by said John D. Crimmins conveyed to The Metropolitan Traction Company of New York by deed dated September 29, 1892, and recorded in said Register's Office on September 29, 1892, in Block Series (Conveyances) Section 4, Liber 18, page 138, and indexed under Block Numbers 1044 and 1045; and by said Metropolitan Traction Company to the Metropolitan Street Railway Company by deed dated September 11, 1896, and recorded in the office of the Register of the City and County of New York, on September 28, 1897, in Block Series (Conveyances) Section 4, Liber 62, page 11, and indexed under Block Numbers 1044 and 1045 on the Land Map of the City of New York; subject to a certain mortgage dated July 19, 1892, made by John D. Crimmins to The Eighth Avenue Railroad Company, to secure the payment of the sum of Two hundred and fifty thousand dollars ($250,000) and interest, on which $50,000 has been paid.

FIFTY-THIRD STREET PROPERTY.

All that certain gore, lot, piece or parcel of land with the building thereon situate, lying and being on the northerly side of Fifty-third Street in the City of New York, in the Twenty-second Ward of said City, and bounded and described as follows: Beginning at a point on the northerly side of Fifty-third Street at a point distant four hundred thirty-four (434) feet eleven (11) inches easterly from the corner formed by the intersection of

the easterly side of Ninth Avenue with the northerly side of Fifty-third street; running thence northerly and parallel with Ninth Avenue thirty-nine (39) feet three and one half (3½) inches or thereabouts to the southerly line of lands formerly of Jacob Harsen; thence easterly along the said line of lands formerly of Jacob Harsen twenty-five (25) feet or thereabouts, thence southerly and again parallel with Ninth Avenue thirty-seven (37) feet five and one-eighth (5⅛) inches or thereabouts to the northerly side of Fifty-third Street, and thence westerly along said northerly side of Fifty-third Street twenty-five feet (25) to the point or place of beginning. Being the same premises conveyed to John D. Crimmins by Margaret F. Miller by deed dated August 3, 1892, and recorded in the office of the Register of the City and County of New York on August 3, 1892, in Block Series (Conveyances) Section 4, Liber 17, page 87, and by the said John D. Crimmins conveyed to The Metropolitan Traction Company of New York by deed dated September 29, 1892, and recorded in the Office of the Register of the City and County of New York on September 29, 1892, in Block Series (Conveyances) Section 4, Liber 18, page 135 and indexed under Block Number 1044 and by said The Metropolitan Traction Company of New York conveyed to the Metropolitan Street Railway Company by deed dated September 15, 1897, and recorded in said Register's office on September 28, 1897, in Block Series (Conveyances) Section 4, Liber 62, Page 9, and indexed under block number 1044.

Also all those certain gore lots, pieces or parcels of land, with the improvements thereon, situate, lying and being in the Twenty-second Ward of the City of New York and bounded and described as follows: Beginning at a point on the northerly side of Fifty-third Street distant two hundred and seventy-five (275) feet westerly from the corner formed by the intersection of the westerly side of Eighth Avenue, with the Northerly side of Fifty-third Street and running thence

westerly along said northerly side of Fifty-third Street sixty-five (65) feet one (1) inch to the Easterly line of a gore lot conveyed to the Metropolitan Street Railway Company by the Metropolitan Traction Company of New York by deed dated September 15, 1897; thence northerly along said easterly line of said gore lot thirty-seven (37) feet five and one-eighth (5⅛) inches or thereabouts to the southerly line of lands formerly of Jacob Harsen, deceased; thence easterly along said line of lands of Jacob Harsen, deceased, sixty-five (65) feet one (1) inch or thereabouts to a point distant two hundred seventy-five (275) feet westerly from Eighth Avenue; and thence southerly on a line parallel with Eighth Avenue thirty-four (34) feet ten and five eighths (10⅝) inches to the northerly side of Fifty-third Street to the point or place of beginning. Also, all those certain gore lots, pieces or parcels of land, with the improvements thereon, situate, lying and being in the Twenty-second Ward of the City of New York and bounded and described as follows: Beginning at a point on the northerly side of Fifty-third Street distant four hundred nine (409) feet eleven inches (11) from the corner formed by the intersection of the easterly side Ninth Avenue with the northerly side of Fifty-third Street; running thence northerly forty-two (42) feet two (2) inches or thereabouts to the southerly line of lands formerly of Jacob Harsen, deceased; thence easterly along said line of lands of Jacob Harsen, deceased, twenty-five (26) feet to the westerly line of a gore lot conveyed to the Metropolitan Street Railway Company by the Metropolitan Traction Company of New York by deed dated September 15, 1897; thence southerly along said westerly line of said gore lot and parallel with Ninth Avenue thirty-nine (39) feet and three and one-half inches (3½) or thereabouts to the northerly side of Fifty-third Street at a point distant three hundred and sixty-five (365) feet one (1) inch westerly from the corner formed by the intersection of the westerly side of Eighth Avenue with the northerly

side of Fifty-third Street, and thence westerly along said northerly side of Fifty-third Street twenty-five (25) feet to the point or place of beginning; being the premises conveyed to the Metropolitan Street Railway Company by The Metropolitan Traction Company of New York by deed dated September 15, 1897, and recorded in the office of the Register of the City and County of New York on September 28, 1897, in Block Series (Conveyances) Section 4, Liber 62, page 6, and indexed under Block number 1044.

TWENTY-THIRD STREET LEASEHOLD.

All those certain lots, pieces and parcels of land in the Sixteenth Ward of the City of New York which, taken together, are bounded and described as follows: Beginning at the intersection of the northerly side of West Twenty-third Street with the westerly side of Eleventh avenue; thence running northerly and parallel with Eleventh Avenue ninety-eight (98) feet nine (9) inches or thereabouts to the half distance line between Twenty-third Street and Twenty-fourth Street; thence westerly and along said half distance line four hundred fifty-two (552) feet seven and one-half (7½) inches or thereabouts to the easterly line of Thirteenth Avenue; thence southeasterly and parallel with Thirteenth Avenue one hundred one (101) feet four (4) inches or thereabouts to a point formed by the intersection of the easterly line of Thirteenth Avenue with the northerly line of Twenty-third Street; thence easterly and parallel with Twenty-third Street four hundred thirty (436) feet or thereabouts to the point or place of beginning.

B. REAL ESTATE SUBJECT TO THE METROPOLITAN STREET RAILWAY COMPANY'S GENERAL AND COLLATERAL TRUST MORTGAGE.

NINTY-SIXTH STREET AND FIRST AVENUE PROPERTY.

All that certain block, piece or parcel of land with the buildings and improvements thereon, situate, lying

and being in the Twelfth Ward of the City of New York and bounded and described as follows, viz.: Northerly by the middle line of Ninety-sixth Street; southerly by the middle line of Ninty-fifth Street; westerly by the middle line of First avenue, and easterly by the East or Harlem River. And also the land under water, and all preemptive rights in, upon and under the East or Harlem River, lying in front of the above described block; being the premises conveyed by Daniel B. Hasbrouck and Sarah Hasbrouck, his wife, to the Metropolitan Street Railway Company, by deed dated April 7, 1897, and recorded in the Office of the Register of the City and County of New York, in Block Series (Conveyances), Section 5, Liber 49, page 25, and indexed under Block Number 1575.

AVENUE C DEPOT PROPERTY.

All those two certain lots, pieces or parcels of lands, with the buildings and improvements thereon, situate in the Eleventh Ward of the City of New York, and which taken together are bounded and described as follows: Beginning on the northerly line or side of Eleventh Street, distant one hundred eighty-three (183) feet easterly from the corner formed by the intersection of the northerly side of Eleventh Street with the easterly side of Avenue C, as the same was then laid out and widened, which said widening was not noted or allowed for on the map hereinafter mentioned, and running thence northerly and parallel with Avenue C one hundred three (103) feet three (3) inches to the centre line of the block between Eleventh Street and Twelfth Street; thence easterly along said centre line of the block and parallel with Eleventh Street fifty (50) feet; thence southerly and parallel with Avenue C one hundred three (103) feet three (3) inches to the northerly side or line of Eleventh Street, and thence westerly along the same fifty (50) feet to the point or place of beginning.

All that certain lot, piece or parcel of land with the

buildings thereon erected, situate, lying and being in the Eleventh Ward in the City of New York, and bounded and described as follows: Beginning at a point on the northerly side of Tenth Street, distant two hundred thirty-three (233) feet easterly from the northeasterly corner of Tenth Street and Avenue C, and thence northerly and parallel with Avenue C eighty (80) feet to the point or place of beginning, running northerly from that point and parallel with Avenue C fourteen (14) feet nine (9) inches; thence easterly and parallel with Tenth Street twenty-five (25) feet; thence southerly and again parallel with Avenue C fourteen (14) feet nine (9) inches; thence westerly and again parallel with Tenth Street, Twenty-five (25) feet, to the point or place of beginning.

All that certain piece of land, with the buildings thereon situate, lying and being in the Eleventh Ward of the City of New York on the northerly side of Tenth Street and beginning at a point two hundred eight (208) feet distant easterly from the northeasterly corner of Tenth Street and Avenue C, and running thence easterly along the northerly side of Tenth Street twenty-five feet (25) thence northerly on a line parallel with Avenue C ninety-four (94) feet nine and one-half (9½) inches, to the centre line of the block between Tenth Street and Eleventh Street; thence westerly on a line parallel with Tenth Street twenty-five (25) feet; thence southerly on a line parallel with Avenue C ninety-four (94) feet nine and one-half (9½) inches, to Tenth Street, aforesaid, the place of beginning.

Also, six other lots, pieces and parcels of ground and premises, with the buildings thereon, situate, lying and being in the Eleventh Ward of the City of New York and bounded and described as follows: Beginning at a point on the southerly side of Eleventh Street distant one hundred eight (108) feet easterly from the southeasterly corner of Avenue C and Eleventh Street; and running thence easterly and along the southerly side of Eleventh Street seventy-five (75) feet; thence

southerly and parallel with Avenue C one hundred eighty-nine (189) feet seven (7) inches, more or less, to the northerly side of Tenth Street; thence westerly and along the northerly side of Tenth Street seventy-five (75) feet, and thence northerly and parallel with the Avenue C one hundred eighty-nine (189) feet seven (7) inches, more or less, to the place of beginning.

All those two certain lots, pieces or parcels of land, with the buildings thereon, situate, lying and being on the northerly side of Eleventh Street, in the Eleventh Ward of the City of New York, and known and distinguished on a certain map filed by Frederick De Puyster, Master in Chancery, in the office of the Register of the City and County of New York, entitled "map of two hundred and forty lots of land situate at Burnt Mill Point in the Elevent Ward of the City of New York," by the numbers eighty-five (85) and Eighty-six (86) and more fully bounded and described as follows: Beginning at a point on the northerly side of Eleventh Street in said city, distant two hundred thirty-three (233) feet easterly from the northeasterly corner of Avenue C and Eleventh Street, running thence northerly and parallel with Avenue C one hundred three (103) feet three (3) inches; thence easterly and parallel with Eleventh Street fifty (50) feet; thence southerly and parallel with Avenue C one hundred three (103) feet three (3) inches to Eleventh Street, and thence westwardly along Eleventh Street fifty (50) feet to the place of beginning. Also, all those four certain lots, pieces or parcels of land situate, lying and being in the Eleventh Ward of the City of New York, bounded and described as follows: Beginning at a point on the southerly side of Eleventh Street distant one hundred eighty-three (183) feet easterly from the easterly line of Avenue C, running thence southerly and parallel with Avenue C ninety-four (94) feet nine (9) inches to the centre line of the block, running thence easterly along said centre line one hundred (100) feet; thence northerly and parallel with Avenue C ninety-four (94) feet nine (9) inches to the southerly line or

side of Eleventh Street; thence westerly along the southerly line of Eleventh Street one hundred (100) feet to the place of beginning;

No. 413 East Tenth Street Property.

All that certain lot, piece or parcel of ground, with the building thereon erected, which on a certain map filed by Frederick De Puyster, Master in Chancery (with his certificate endorsed thereon, dated February 1, 1837) in the office of the Register of the City and County of New York, entitled "Map of 240 lots of land situated at Burnt Mill Point in the Eleventh Ward of the City of New York," consisting of one lot of land thereon designated by the number "144" (one hundred and forty-four), is bounded as follows, viz.: Commencing at a point on the northerly side of Tenth Street, distant one hundred and ninety three (193) feet southeasterly from the northeasterly corner of Avenue C and Tenth Street; running thence northeasterly along lot 145 on said map ninety-four (94) feet nine (9) inches to the centre of the block; thence southeasterly along the centre of the block twenty-five (25) feet to lot 143 on said map; thence southwesterly along said lot 143 ninety-four (94) feet nine (9) inches to Tenth Street, and thence northwesterly along Tenth Street twenty-five (25) feet to the point of beginning.

Lenox Avenue and One Hundred and Sixteenth Street Property.

All those certain lots, pieces or parcels of land situate, lying and being in the Twelfth Ward of the City of New York, and which taken together are bounded and described as follows: Commencing at the corner formed by the intersection of the Northerly line of One hundred and sixteenth Street with the westerly side of Lenox Avenue (formerly Sixth Avenue), running thence northerly along said westerly line of Lenox Avenue two hundred one (201) feet ten (10) inches to the

southerly line of One hundred and seventeenth Street; thence westerly along said southerly line of One hundred and seventeenth Street two hundred (200) feet; thence southerly and parallel with Lenox Avenue Two hundred one (201) feet ten (10) inches to the northerly line of One hundred and sixteenth Street; thence easterly along said northerly line of One hundred and sixteenth Street two hundred (200) feet to the point or place of beginning. Being the same premises conveyed by the Metropolitan Traction Company of New York to the Lexington Avenue and Pavonia Ferry Railroad Company by deed dated January 15, 1894, and recorded in the office of the Register of the City and County of New York in Block Series (Conveyances) Section 7, Liber 20, at page 456 and indexed under Block Number 1901, subject, however, to the existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

LEXINGTON AVENUE AND NINETY-NINTH STREET PROPERTY.

All that certain plot, piece or parcel of land, with the buildings and improvements thereon, situate in the City of New York, and bounded and described as follows: Beginning at the northeasterly corner of Fourth Avenue and Ninety-ninth Street, running thence northwardly along the easterly line of Fourth Avenue two hundred one (201) feet ten (10) inches to the southerly line of One hundredth Street; thence easterly along the southerly line of One hundredth Street four hundred five (405) feet; thence southwardly and parallel with Fourth Avenue two hundred one (201) feet ten (10) inches to the northerly line of Ninety-ninth Street, and thence westwardly along the northerly line of Ninety-ninth Street four hundred five (405) feet to the point or place of beginning. Being the same premises conveyed by the Metropolitan Traction Company of New York to the Lexington Avenue and Pavonia Ferry Railroad Company by deed dated January 15th, 1894, and recorded in the office of the Register of the City

and County of New York, in Block Series (Conveyances), Section 6, Liber 22, page 157, and indexed under Block Number 1627. Subject, however, to the existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

LEXINGTON BUILDING.

All those certain lots, pieces or parcels of land with the building or buildings thereon erected, situate, lying and being in the Twelfth Ward of the City of New York, bounded and described as follows: Commencing on the northerly side of Twenty-fifth Street, at a point distant one hundred seven (107) feet six (6) inches westerly from the corner formed by the intersection of the northerly line of Twenty-fifth Street with the westerly line of Third Avenue, and running thence westerly along the northerly line of Twenty-fifth Street, one hundred eighty-seven (187) feet six (6) inches or thereabouts, and thence running northerly and parallel, or nearly so, with Third Avenue one hundred ninety-seven (197) feet five (5) inches to the southerly side of Twenty-sixth Street and thence running easterly along the southerly side of Twenty-sixth Street one hundred eighty-six (186) feet, or thereabouts, and thence running southerly and parallel with Third Avenue ninety-eight (98) feet nine (9)i nches to the centre line of the block between Twenty-fifth and Twenty-sixth Streets, and thence running easterly along the said centre line of the block one (1) foot six (6) inches, thence running southerly and parallel with Third Avenue, ninety-eight (98) feet nine (9) inches to the northerly line of Twenty-fifth Street, being the same premises which were heretofore conveyed by the following conveyances, viz:

Deed of Ruth A. Brown to The Metropolitan Traction Company of New York, dated May 31, 1894, and recorded in the Office of the Register of the City and County of New York, on June 4, 1894, in Block Series (Conveyances) Section 3, Liber 30, page 128

and indexed under Block Number 881. Deeds of John D. Crimmins to the Metropolitan Traction Company of New York, dated respectively July 13, 1893, February 21, 1894, and August 31, 1894, and respectively recorded in said Register's Office on July 24, 1893, March 5, 1894, and October 18, 1894, in Block Series (Conveyances) Section 3, Liber 21, page 408, Liber 26, page 113 and Liber 31, page 57 and all indexed under Block Number 881. Deed of Alonzo C. Munson to The Metropolitan Traction Company of New York, dated June 15, 1894, and recorded in said Register's Office on June 18, 1894, in Block Series (Conveyances) Section 3, Liber 29, page 176 and indexed under Block Number 881.

Subject, however, to an existing mortgage of the Lexington Avenue and Pavonia Ferry Railroad Company.

Belt Line Repair Shops.

All that certain lot, piece or parcel of land, together with the buildings and improvements thereon lying and being in the Twenty-second Ward of the City of New York, situate on the north side of West Fifty-third Street, between Tenth and Eleventh Avenues, and known as lot number 768 on a certain map of John Hopper's Estate, filed in the Register's Office of the City of New York on December 31, 1864, as Map No. 660 and being bounded and described as follows: Beginning at a point on the northerly side of Fifty-third Street distant four hundred seventy-five (475) feet westwardly from the westerly side of Tenth Avenue, and running thence westwardly along said northerly side of Fifty-third Street twenty-five (25) feet; thence northerly on a line parallel with Tenth Avenue forty-eight (48) feet three and three-quarters (3¾) inches, thence southwesterly twenty-five (25) feet or thereabouts to a point in a line distant forty-four (44) feet ten (10) inches northerly from the northerly side of Fifty-third Street, and

thence southerly on a line parallel with Tenth Avenue forty-four (44) feet ten (10) inches to the northerly side of Fifty-third Street to the point or place of beginning. Being the same premises conveyed to The Metropolitan Traction Company of New York by Bertha Volkening by deed dated March 30, 1893, and recorded in the office of the Register of the City and County of New York on March 30, 1893, in Block Series (Conveyances) Section 4, Liber 21, page 283.

And also all those certain lots, pieces or parcels of land, together with the buildings and improvements erected thereon, situate, lying and being in the Twenty-second Ward of the City of New York and bounded and described as follows: Beginning at a point three hundred (300) feet easterly from the southeasterly corner of Eleventh Avenue and Fifty-fourth Street; thence easterly along the line of Fifty-fourth Street twenty-five (25) feet; thence southerly parallel with Eleventh Avenue, through the centre of the block to the line of property now or formerly owned by Garrit H. Striker one hundred fifty-six (156) feet; thence northwesterly along the line of said property twenty-five (25) feet three and one quarter (3¼) inches; thence northerly parallel to Eleventh Avenue one hundred fifty-two (152) feet six and one quarter (6¼) inches, to the point or place of beginning, be the said several dimensions more or less. Being the same premises conveyed by Andrew Doerrschuck and Annie, his wife, to The Metropolitan Traction Company, of New York, by deed dated March 6, 1893, and recorded in the Office of the Register of the City and County of New York on March 8, 1893, in Block Series (Conveyances) Section 4, Liber 20, page 296 and indexed under Block Number 1082.

Chambers Street Leasehold.

All the leasehold rights of the Metropolitan Street Railway Company in and to all that certain lot, piece or parcel of land situate, lying and being in the

Seventh Ward of the City of New York, bounded and described as follows: Beginning at the corner formed by the intersection of the southerly line of Cherry Street with the westerly line of East Street, and running thence southerly along the westerly line of East street one hundred (100) feet three (3) inches; thence westerly on a line parallel or nearly so with the southerly line of Cherry Street two hundred forty-five (245) feet six (6) inches; thence northerly on a line parallel or nearly so with the westerly line of East Street twenty-six (26) feet one (1) inch; thence easterly parallel or nearly so with said line of Cherry Street nineteen (19) feet eleven (11) inches; thence northerly parallel or nearly so with the said line of East Street seventy-five (75) feet the said line of Cherry Street; thence easterly along said last mentioned line two hundred twenty-five (225) feet to the place of beginning, and known by the Street Number 505 Cherry Street. Also all the leasehold rights of the Metropolitan Street Railway Company in and to all that certain lot, piece or parcel of land situate, lying and being on Cherry Street in said City immediately adjoining the above described premises on the westerly side thereof, which said lot is about twenty (20) feet in width in front and rear and seventy-five (75) feet in depth on each side.

Twenty-fourth Street Leasehold.

All the leasehold rights of the Metropolitan Street Railway Company in and to all those ten certain lots of ground, situate, lying and being in the Sixteenth Ward of the City of New York, distinguished on a map of certain lands of Clement C. Moore, situate at Greenwich, in the City of New York, recorded in the office of the Register of the City and County of New York, in Liber 634 of Conveyances, page 411, by the numbers 905 (nine hundred and five to (nine hundred and eight (908 and 936 (nine hundred and thirty-six) to 941 (nine hundred and forty-one) all inclusive; and

bounded together as follows, viz: Southeastwardly in front by Eleventh Avenue; southwestwardly by the half distance line between Twenty-third Street and Twenty-fourth Street, northwestwardly by lot numbered on the said map 935 (nine hundred and thirty-five) and northeastwardly by the said Twenty-fourth Street. Containing together in width along the said Eleventh Avenue and on the northwestwardly side thereof, ninety-eight (98) feet eight (8) inches, and on the northeastwardly and southwestwardly sides thereof, two hundred twenty-five (225) feet be the said several measurements more or less.

III.

STREET SURFACE RAILROADS AND RAILROAD ROUTES IN THE COUNTY OF NEW YORK, CITY OF NEW YORK, AND STATE OF NEW YORK, OPERATED BY THE METROPOLITAN STREET RAILWAY COMPANY AS LESSEE, UNDER THE LEASES HEREINAFTER MENTIONED:

LINES LEASED TO AND OPERATED BY METROPOLITAN STREET RAILWAY COMPANY.

Lease of the Bleecker Street and Fulton Ferry Railroad Company to the Twenty-third Street Railway Company.

Dated January 10, 1876, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of ninety-nine years, said lease including the railroad operated along the streets described as follows: Commencing at Twenty-third Street and Eleventh Avenue, running along Eleventh Avenue to Fourteenth Street to Fourth Avenue; and also commencing at the intersection of Fourteenth Street and Hudson Street and thence running southerly and easterly through the city upon various streets, to Fulton Ferry.

Lease of the Broadway and Seventh Avenue Railroad Company to The Hudson, West Street and Pavonia Ferry Railroad Company.

Dated May 13, 1890, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor and any extensions of said charter, said lease including the railroad operated along the streets, described as follows: Commencing at Fifty-ninth Street and Seventh Avenue; running thence through and along Seventh Avenue to Broadway; thence through and along Broadway to Fifteenth Street; and thence through and along University Place and certain other streets to Barclay Street; and thence through Barclay Street and Park Place to Broadway; and through Seventh Avenue, from Broadway to Greenwich Avenue to Macdougal Street to West Fourth Street, and through Thompson and Sullivan Streets to West Broadway; and also from Broadway and Twenty-third Street, through Twenty-third Street to Lexington Avenue, thence through Lexington Avenue to Twenty-seventh Street.

Lease of the Central Park, North and East River Railroad Company to The Metropolitan Cross-Town Railway Company, and the Houston, West Street and Pavonia Ferry Railroad Company.

Dated October 14, 1892, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor and any extensions of said charter, said lease including the railroad operated along the streets described as follows: From Tenth Avenue and Fifty-ninth Street through Tenth Avenue, West Street and other streets to the South Ferry; and also from Tenth Avenue at Fifty-ninth Street along Fifty-ninth Street to First Avenue; and thence through various other streets and avennes to the said South Ferry.

Lease of the Eighth Avenue Railroad Company to Metropolitan Street Railway Company.

Dated November 23, 1895, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of ninety-nine years from January 1, 1896, said lease including the railroad operated along the streets described as follows: Commencing at or near the intersection of Vesey Street and Broadway, thence running through Vesey Street to College Place, and through College Place, Church Street and Chambers Street to West Broadway and through West Broadway to Canal Street, and through Canal Street to Hudson Street, and through Hudson Street to Eighth Avenue, and through and along Eighth Avenue to the point where the street or road commonly called the McCombs Dam Road intersects or meets Eighth Avenue; thence through and along the said McCombs Dam Road to or near the westerly end of the bride known as McCombs Dam Bridge, with an extension or branch running from the junction of West Broadway and Canal Street to Broadway, and also the extension of its railroad from the junction of McCombs Dam Road along Eighth Avenue to the Harlem River.

Lease of The Forty-second Street and Grand Street Ferry Railroad Company to the Metropolitan Crosstown Railway Company and The Houston, West Street and Pavonia Ferry Railroad Company.

Dated April 6, 1893, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor and any extensions of the charter, said lease including the railroad operated along the streets described as follows: Commencing at the ferry at the western extremity of Forty-second Street; thence through and along Forty-second Street, with a double track to Tenth Avenue; through and along Tenth Avenue to Thirty-fourth

Street; through and along Thirty-fourth Street, with a double track, to Broadway; through and along Broadway to Twenty-third Street; through and along Twenty-third Street to Fourth Avenue; through and along Fourth Avenue and Union Square, with a double track to Fourteenth Street; through and along Fourteenth Street, with a double track, to Avenue A; through and along Avenue A, with a double track, to Second Street, and thence along Avenue A, with a single track, to First Street; through and along First Street and Houston Street, with a single track, to Cannon Street; through and along Cannon Street, with a single track, to Grand Street; through and along Grand Street, with a single track, to Goerick Street, and thence through and along Grand Street, with a double track, to Grand Street Ferry, at the foot of Grand Street, East River; and also from the intersection of Second Street and Avenue A through and along Second and Houston Streets, with a single track, to Goerck Street; thence through and along Goerck Street, with a single track, to Grand Street to Grand Street Ferry.

Lease of the New York and Harlem Railroad Company (city line) to the Metropolitan Street Railway Company.

Dated June 11, 1896, by which all the railroads and roailroad routes of the lessor in the City of New York are leased to the lessee for the term of nine hundred and ninety-nine years from July 1, 1896; said lease including the railroad operated along the streets described as follows:

Commencing at intersection of Park Row, Ann Street and Broadway, to Centre Street to Grand Street and Broome Street to Bowery, to Fourth Avenue, to Forty-second Street, to Madison Avenue, to One hundred and thirty-eighth Street also on Eighty-sixth Street from Madison Avenue to First Avenue on First Avenue to Ninety-third Street to Astoria Ferry; also extension on Thirty-second and Thirty-third Streets,

Lexington Avenue and Thirty-fourth Street, from Fourth Avenue to Thirty-fourth Street Ferry.

Lease of The Ninth Avenue Railroad Company to The Houston, West Street and Pavonia Ferry Railroad Company.

Dated March 12, 1892, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of ninety-nine years, said lease including the railroad operated along the streets described as follows: Commencing at the intersection of Broadway and Fulton Street, running through Fulton Street to Greenwich Street; thence through and along Greenwich Street to Ninth Avenue; thence through and along Ninth Avenue and Columbus Avenue to the Grand Boulevard; thence through and along the said Boulevard to Amsterdam Avenue (formerly Tenth Avenue), and thence along Amsterdam Avenue to Manhattan Street, returning through Amsterdam Avenue, the Boulevard, Columbus Avenue, Ninth Avenue, Gansevoort Street and Washington Street to Fulton Street; thence through Fulton Street to Broadway to the place of beginning; also on Fifty-third Street from Seventh Avenue to Ninth Avenue.

Lease of the Second Avenue Railroad Company to Metropolitan Street Railway Company.

Dated January 28, 1896, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor and any extensions of said charter, said lease including the railroad operated along the streets described as follows: Upon First Avenue and Second Avenue, through various streets and avenues in the City of New York from the Harlem River to Peck Slip, with extensions and connections from Eighth Avenue through the transverse road in Central Park, along Eighty-fifth Street, connecting with Madison Avenue. Also an extension from Bowery

through Worth Street to Broadway. Also an extension from Second Avenue and Tenth Street, through Tenth Street and Astor Place to Broadway.

Lease of Sixth Avenue Railroad Company to The Houston, West Street and Pavonia Ferry Railroad Company.

Dated February 1, 1892, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of eight hundred years, said lease including the railroads operated along the streets described as follows: Commencing at the intersection of Fifty-ninth Street and Sixth Avenue, running thence southerly along Sixth Avenue to Carmine Street; thence through Carmine Street to Varick Street; thence through Varick Street to Canal Street; thence through Canal Street to West Broadway; and also from the intersection of West Broadway and Canal Street, thence through and along West Broadway to Vesey Street; thence through Vesey Street to Broadway; and also through Church Street to Chambers Street, and through Chambers Street to Broadway; and also upon and along Lenox Avenue from One hundred and Tenth Street to the Harlem River, also on West Third Street from Carmine to Sullivan Streets. Also on Fifty-third Street from Sixth Avenue to Seventh Avenue.

Lease of the Twenty-Third Street Railway Company to The Houston, West Street and Pavonia Ferry Railroad Company.

Dated April 25, 1893, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the unexpired term of the charter of the lessor, and any extension of said charter, said lease including the railroad operated along the streets described as follows: Upon Twenty-third Street from the North River to the East River, and upon Second Avenue from its intersection with Twenty-third Street to Twenty-ninth Street, and thence

through Twenty-ninth Street, and also through Twenty-eighth Street to First Avenue, and thence through First Avenue to Thirty-fourth Street.

Lease of the Third Avenue Railroad Company to Metropolitan Street Railway Company.

Dated April 13, 1900, by which all the railroads and railroad routes of the lessor in the City of New York are leased to the lessee for the term of nine hundred and ninety-nine years, said lease including the railroad operated along the streets described as follows: Beginning at the intersection of Park Row and Broadway; thence extending along Park Row, the Bowery, Third Avenue to the Harlem River; also extending from the North River at the foot of One hundred and thirtieth Street, thence through One hundred and thirtieth Street, Manhattan Street and One hundred and twenty-fifth Street to the East River; also extending from One hundred and twenty-fifth Street through Amsterdam Avenue to the terminus of said Avenue; and also on One Hundred and thirtieth Street from Third Avenue to a point at or near Lexington Avenue.

TOGETHER WITH ALL AND SINGULAR the improvements on said properties, and all and singular, the railroads, lands, buildings, structures, fixtures, privileges, franchises, rights of way, trackage rights, contracts, consents, leaseholds, easements and other rights and interests then owned by the Metropolitan Street Railway Company; also all and singular the tracks, side tracks or sidings, switches, rails, bridges, fences, buildings, depots, station-houses, power-houses, car-houses, machine shops, repair shops and other shops, and all other buildings, improvements, erections and structures, and all dynamos, belting, engines, boilers, regulators, meters, poles, trolleys, conduits, feeders, cables, wires, switchboards, lamps and machinery for producing, generating and distributing electricity or power; and also all and singular the rolling stock, equipment,

motors, engines, tenders, carriages, cars, trucks, horses, harness, tools, implements, furniture, fixtures, machinery, materials, coal, wood, oil, fuel and other supplies and also all maps, drawings, profiles, licenses, records, deeds, contracts and agreements, patents and patented inventions and processes then owned by the Metropolitan Street Railway Company, all of which personal property was thereby declared to be fixtures and appurtenances of said railroads; and also all then present or future improvements and additions made or to be made upon and to any or all of said railroads or property, real and personal, and any and all equipment therefor and renewals or replacements of the same or of any part thereof or of the appurtenances; and also all and every other railroad, which the Metropolitan Street Railway Company should thereafter acquire or construct by means of the proceeds of any of the bonds thereby secured, and all power-houses, real estate equipment and other property, real or personal, appurtenant thereto.

And all and singular the tolls, fares, rents, issues, earnings, income, profits and other benefits and advantages of, or in any wise growing out of, all or any of the said several railroads, franchises and property, and all and singular the tenements, hereditaments and appurtenances to any of the said railroads or property belonging or in any wise appertaining, and the reversion or reversions, remainder or remainders thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well at law as in equity, of the Metropolitan Street Railway Company, in and to the same and every part and parcel thereof with the appurtenances.

IV.

AND ALSO ALL THE RIGHT, TITLE AND INTEREST of the Metropolitan Street Railway Company in and to the following shares of stock which were then pledged

and deposited with the Guaranty Trust Company of New York under the mortgage dated February 1, 1897, from the Metropolitan Street Railway Company to said Guaranty Trust Company of New York, as Trustee, securing the General Mortgage and Collateral Trust Five Per Cent. Gold Bonds of the Metropolitan Street Railway Company, viz:

1. Fourteen thousand (14,000) shares of the capital stock of The Broadway and Seventh Avenue Railroad Company of the par value of one hundred dollars ($100) each.

2. Four thousand (4,000) shares of the capital stock of the Forty-second Street and Grand Street Ferry Railroad Company of the par value of one hundred dollars ($100) each.

3. Three thousand (3,000) shares of the capital stock of the Central Park, North and East River Railroad Company of the par value of one hundred dollars (100) each.

4. Nine thousand, nine hundred (9,900) shares of the capital stock of the Thirty-fourth Street Cross-Town Railway Company, of the par value of one hundred dollars ($100) each.

To have and to hold the said described premises and property unto your orator, its successors in the trust, its or their assigns, in trust for the equal and proportionate benefit and security of all holders of the bonds and coupons issued and to be issued and secured by said mortgage and for the enforcement of the payment of the said bond and interest when payable according to the tenor, purport and effect of such bonds and coupons and to secure the performance and observance of and compliance with the covenants and conditions of the said indenture, without preference, priority or distinction as to lien or otherwise of one bond over any other bond by reason of priority in the issue, sale or negotiation thereof or by reason of the purpose of its issue as in said mortgage or deed of trust more fully set forth.

All the property so conveyed and mortgaged to your orator as aforesaid is situated within the Southern District of New York. Said mortgage was duly recorded in the office of the Register of the County of New York in which the property thereby mortgaged was situated.

Your orator duly accepted the trusts therein created and it was and now is fully authorized and empowered to take and hold in trust the property conveyed to it therein and to execute the trusts reposed in it under and by virtue of the provisions thereof.

A copy of this mortgage marked Exhibit A is filed herewith and your orator prays leave to refer to the same as if it were fully set forth in this bill of complaint.

V. After the execution and delivery of said mortgage, the Metropolitan Company duly made and executed bonds of the issue described in said mortgage of the aggregate par value of sixteen million six hundred and four thousand dollars ($16,604,000.) all of which bonds were duly certified by your orator in all respects as provided in said mortgage, and all of said bonds, as your orator is informed and believes, were duly issued by the Metropolitan Company for a valuable consideration and in accordance with the provisions of said mortgage; and said bonds are now outstanding in the hands of divers persons and corporations wh[illegible]re now the owners and holders thereof for value and your orator is advised and avers that said bonds so issued as aforesaid are now in all respects valid outstanding obligations of the defendant Metropolitan Company and are entitled to the benefit and security of the said mortgage.

VI. Certain of the bonds so issued as aforesaid were certified and delivered by your orator and issued in accordance with the provisions of subdivision (2) of Article Second of said mortgage against the deposit with your orator, as security for the bonds

issued and to be issued under said mortgage, of the following securities, viz.:

First Mortgage Five Per Cent. Bonds of The Broadway and Seventh Avenue Railroad Company due June 1, 1904	$1,497,000.00
Consolidated Mortgage Seven Per Cent. Bonds of the Central Park North and East River Railroad Company due December 1, 1902	1,200,000.00
Second Mortgage Five Per Cent. Bonds of The Broadway Surface Railroad Company due July 1, 1905	1,000,000.00
Five Per Cent. Bonds of The Metropolitan Crosstown Railway Company due May 1, 1901	300,000.00
First Mortgage Six Per Cent. Extended Bonds of the Twenty-third Street Railway Company due January 1, 1909	250,000.00
First Mortgage Six Per Cent. Extended Bonds of the Forty-second Street and Grand Street Ferry Railroad Company due January 1, 1909	$236,000.00
Five Per Cent. Debenture Bonds of the Twenty-third Street Railway Company due January 1, 1905	150,000.00
Bond of John D. Crimmins due August 1, 1897, secured by mortgage to The Eighth Avenue Railroad Company	200,000.00
Bond of John D. Crimmins due February 20, 1894, secured by mortgage to The Mutual Life Insurance Company of New York	150,000.00

Said securities so deposited with your orator ever since have been and now are held in trust by it subject to the trusts declared in said mortgage as additional security for the payment of the bonds issued thereunder.

VII. Of the property so conveyed to your orator as trustee by the said mortgage dated March 21, 1902, your orator in accordance with the provisions of said mortgage released from the lien of said mortgage, as it was authorized to do under the provisions thereof, a portion of the property hereinbefore specifically described as "146th Street, 147th Street, Lenox Avenue and 7th Avenue property," and included among the property enumerated in Paragraph A of Subdivision II of the description of the property conveyed to your orator as hereinbefore set forth as "Real estate not subject to the Metropolitan Street Railway Company's General and Collateral Trust Mortgage;" the property so released by your orator being described as follows:

All that lot of land situated in the Borough of Manhattan, in the City, County and State of New York, described as follows: Commencing at the intersection of the easterly line of Seventh Avenue and the northerly line of One hundred and forty-sixth Street, and running thence northerly and along said easterly line of Seventh Avenue one hundred and ninety-nine feet ten inches; thence easterly and along the southerly line of One hundred and forty-seventh Street one hundred and one feet, more or less, to the westerly line of a building owned by the vendor, and situate about one hundred and one feet east of the easterly line of Seventh Avenue, and thence southerly and along the westerly side of said building and parallel with the easterly line of Seventh Avenue one hundred and ninety-nine feet ten inches, and to the northerly line of said One hundred and forty-sixth Street, and thence westerly and along said northerly line of One hundred and forty-sixth Street to the place of commencement one hundred and one feet, more or less; together with the tenements, hereditaments and appurtenances thereunto belonging.

And your orator, in accordance with the provisions of said mortgage, further released from the lien of the said mortgage, as it was authorized to do under the provisions thereof, the property hereinbefore specifically described as "Lenox Avenue and 116th Street property" and included among the property enumerated in Paragraph B of Subdivision II of the description of the property conveyed to your orator as hereinbefore set forth as "Real estate subject to the Metropolitan Street Railway Company's General and Collateral Trust Mortgage;" said property so released being described as follows:

"All those certain lots, pieces or parcels of land situate, lying and being in the Twelfth Ward of the City of New York, and which taken together are bounded and described as follows: Commencing at the corner formed by the intersection of the northerly line of One hundred and sixteenth Street with the westerly side of Lenox Avenue (formerly Sixth Avenue), running thence northerly along said westerly line of Lenox Avenue two hundred one (201) feet ten (10) inches to the southerly line of One hundred and seventeenth street; thence westerly along said southerly line of One hundred and Seventeenth Street two hundred (200) feet; thence southerly and parallel with Lenox Avenue two hundred one (201) feet ten (10) inches to the northerly line of One hundred and sixteenth Street; thence easterly along said northerly line of One hundred and sixteenth Street two hundred (200) feet to the point or place of beginning. Being the same premises conveyed by The Metropolitan Traction Company of New York to the Lexington Avenue and Pavonia Ferry Railroad Company by deed dated January 15, 1894, and recorded in the Office of the Register of the City and County of New York in Block Series (Conveyances) Section 7, Liber 20, at page 456 and indexed under Block Number 1901.

VIII. Your orator further shows that, as it is informed and believes, simultaneously with or immediately prior to the execution and delivery of the said mortgage, Exhibit A filed herewith, the Metropolitan Company entered into a certain Indenture of Lease dated February 14, 1902, with the defendant the New York Company, under its then corporate name of Interurban Street Railway Company, and by said lease the Metropolitan Company did grant, lease and demise to the defendant New York Company under its said corporate name of Interurban Street Railway Company for the full term of Nine hundred and ninety-nine years from February 24, 1902, all its railroads and railroad routes and all its real estate and the buildings and improvements thereon, and all its leasehold interests and leased lines, including all the street surface railroads and real estate owned by it, and all the street surface railroads and railroad routes operated by it as lessee which are described in the said mortgage or deed of trust to your orator, Exhibit A and which were conveyed to your orator subject to the trusts thereof.

Said lease provided among other things that subject to the provisions therein contained and for the purposes therein specified, the Metropolitan Company, the Lessor, might with the consent of the New York Company, the Lessee, issue its bonds secured by mortgage upon its property and your orator is informed and believes that all the bonds issued by the Metropolitan Company under the aforesaid mortgage Exhibit A were issued in accordance with the provisions contained in said lease and for the purposes therein specified and with the consent of the Lessee, the New York Company.

A copy of said lease is filed herewith marked " Exhibit B " and your orator prays leave to refer to the same as if it were fully set forth in this bill of complaint.

Shortly after the execution of said lease, as your orator is informed and believes, the New York Company entered into possession of the said demised railroads and property and has operated the same and has

collected the rents and profits thereof until the appointment of its receivers as hereinafter mentioned.

IX. On or about the 24th day of September, 1907, The Pennsylvania Steel Company and The Degnon Contracting Company filed their bill in this Court against the defendant the New York Company alleging facts, as your orator is advised, constituting insolvency of the New York Company and praying for the appointment of receivers of its property. Thereafter the New York Company filed its answer to said bill admitting the allegations thereof and thereupon and on or about September 24, 1907, by order of this Court, the above named defendants Adrian H. Joline and Douglas Robinson were appointed receivers of said New York Company, and of all its property, wherever situated, and they were thereby authorized, empowered and instructed among other things, to enter upon and take possession of all such property, and to manage, operate and control the same.

Thereafter, the said Adrian H. Joline and Douglas Robinson, appointed receivers as aforesaid, duly qualified as such receivers and as such receivers entered upon and took possession of the property of said defendant New York Company, including the property which is described in the said mortgage dated March 21, 1902 and was conveyed to your orator subject to the trusts thereof, and they have since used and operated the same and are now, as such receivers, in possession of said property.

Your orator files herewith a copy of said bill and answer and order marked Exhibit C and prays leave to refer thereto for a precise statement of the contents thereof.

X. Your orator further alleges, that thereafter the Metropolitan Company presented its duly verified petition to this Court wherein it alleged facts, as your orator is advised, constituting insolvency of the Metropolitan Company, and prayed that it might become a party defendant to said suit of The Pennsylvania

Steel Company and The Degnon Contracting Company against the New York Company and that the receivership under the bill of complaint in the said cause be extended so as to expressly embrace the interests of the Metropolitan Company in said property.

Thereafter and on October 1, 1907, by an order of this Court, the Metropolitan Company was made a party defendant in said cause and the receivership in said cause was extended to the properties of the Metropolitan Company as prayed in said petition and the said Adrian H. Joline and Douglas Robinson, theretofore appointed receivers in said cause, were appointed receivers of the properties of the Metropolitan Company.

Thereafter and on or about October 1, 1907, as your orator is informed and believes, the said Adrian H. Joline and Douglas Robinson duly qualified as such receivers and as receivers as aforesaid they are now in possession of all the railroads, properties and franchises of the Metropolitan Company described in said mortgage dated March 21, 1902.

Your orator files herewith a copy of said petition and of said order of this Court marked Exhibit D and prays leave to refer thereto for a precise statement of the contents thereof.

XI. Thereafter and on or about October 9th, 1907, your orator filed its bill in this Court (leave having been granted to your orator so to do) against the Metropolitan Company, the New York Company, said Adrian H. Joline and Douglas Robinson as Receivers of the New York Company, said Adrian H. Joline and Douglas Robinson as Receivers of the Metropolitan Company, The Pennsylvania Steel Company and The Degnon Contracting Company alleging that unless the income and profits of the mortgaged premises were applied in accordance with the provisions of said mortgage the mortgaged premises would be wasted and the mortgage security become greatly impaired, and praying that a receiver

of the mortgaged property be appointed and the income and profits thereof be applied in accordance with the provisions of said mortgage.

Thereafter and on or about October 7th, 1907, said Adrian H. Joline and Douglas Robinson were by an order of this Court appointed under the said bill of complaint in said cause receivers of all the railroads, properties and premises mortgaged and pledged under the said mortgage dated March 21, 1902, and of all the tolls, earnings, income, rents, issues and profits of said railroad, property and premises, and thereafter duly qualified as such receivers.

Your orator files herewith a copy of said bill of complaint marked E and of said order marked F and prays leave to refer thereto for a precise statement of the contents thereof.

XII. Further complaining, your orator shows that the property granted and conveyed to your orator under the said mortgage dated March 21, 1902, Exhibit A, was so granted and conveyed to secure the performance and observance of all the covenants and conditions contained in said mortgage, and that in and by said mortgage Exhibit A the Metropolitan Company did agree and covenant, among other things, that it would from time to time punctually observe and perform all of the obligations and pay and discharge all amounts payable under or by virtue of any lease thereby mortgaged so that the interest of the Metropolitan Company in any such leasehold estate might be at all times preserved unimpaired as security for the bonds issued under said mortgage.

XIII. Your orator alleges that among the leasehold estates mortgaged to your orator under said mortgage, Exhibit A, is the leasehold estate demised to the Metropolitan Company, under a certain Indenture of Lease made on or about April 13, 1900, between The Third Avenue Railroad Company (hereinafter in this bill of complaint called the Third Avenue Company) and the

defendant Metropolitan Company, which lease was subsequently by an Agreement made on or about May 13, 1900, between the said parties, in certain respects modified and corrected.

A copy of said Lease marked Exhibit G and of said Agreement marked Exhibit H is filed herewith and your orator prays leave to refer to the same as if they were fully set forth in this bill of complaint.

XIV. In and by said lease, Exhibit G, the lessee, the defendant Metropolitan Company did agree among other things to pay to the lessor the Third Avenue Company a certain annual rental and as a part of such annual rental did agree from and after the expiration of six years from the date of said lease, to wit from and after the 13th day of April, 1906, for a period of four years thereafter, to pay to the lessor, the Third Avenue Company, quarter yearly, a dividend upon the outstanding capital stock of the Third Avenue Company at the rate of six (6) per centum per annum.

XV. Your orator is advised that in accordance with the provisions of said lease there became due and payable on October 13th, 1907, to the Third Avenue Company an instalment of rent for the quarter ending on that day amounting to a dividend of one and one-half per centum on the said outstanding capital stock of the Third Avenue Company.

Your orator is informed and believes that the defendant Metropolitan Company has not paid or caused to be paid the said instalment of rent payable as aforesaid, but has wholly failed and neglected so to do and the said Metropolitan Company has therein wholly made default and the said instalment of rent remains and is now wholly due and unpaid and in default; that the entire property of the Metropolitan Company is in the hands of said Joline and Robinson, receivers as aforesaid, and that said Joline and Robinson, both as Receivers of the New York Company and as Receivers of the Metropolitan Company, acting in accordance with

the directions of this Court in respect thereto have failed to pay said instalment of rent, and have made default in respect thereto.

Your orator is advised and so charges that such default in the payment of the aforesaid rent due and payable under said Lease, Exhibit G, is and constitutes a default by the Metropolitan Company in the due observance and performance by it of the covenants and conditions required in said mortgage, Exhibit A, to be kept and performed by it, and that the Metropolitan Company ever since has been and now is in default in respect thereto.

XVI. Further complaining, your orator alleges on information and belief, that the various lines of railway embraced in said lease of the Metropolitan Company to the New York Company, Exhibit B, as well the lines owned by the Metropolitan Company as the lines leased to it, are subject to funded indebtedness secured by mortgage which is now outstanding and that failure to meet the interest on such underlying funded indebtedness as such interest matures, will operate also as a default under the mortgage securing the indebtedness the interest on which shall so become in default and will render said mortgage enforceable: and that the total of such funded indebtedness now outstanding secured by mortgages (exclusive of the bonds issued and secured under the mortgage to your orator dated March 21, 1902) amounts to upwards of eighty-three million dollars ($83,000,000) and that the annual interest charges thereunder amount to upwards of Three million seven hundred and fifty thousand dollars ($3,750,000).

Your orator charges, that by said lease made by the Metropolitan Company to the New York Company, the Metropolitan Company parted with the possession of its entire railroad system; that the Metropolitan Company has no other resources wherewith to meet the fixed charges on the mortgage indebtedness of its said

system so leased, and embraced in said mortgage to your orator or to meet the accruing rentals of said lines so leased to the Metropolitan Company or its predecessors and by the Metropolitan Company so leased to the New York Company and embraced in said mortgage to your orator or to meet other indebtedness or liabilities of the Metropolitan Company than the rentals reserved under said lease made by the Metropolitan Company to the New York Company as part of which said New York Company agreed to pay such fixed charges and such rentals and to perform the other covenants therein contained, and that said Metropolitan Company is now insolvent and unable to meet its obligations, and by reason of the matters hereinbefore alleged, it is and will be unable to perform its covenants and obligations under said mortgage dated March 21, 1902.

Your orator further charges that the New York Company is insolvent and unable to meet its obligations, and that by a decree made by this Court on or about October 25, 1907, in the suit above mentioned of The Pennsylvania Steel Company and The Degnon Contracting Company against the New York Company this Court did order, adjudge and decree and find that the said New York Company was insolvent, and your orator alleges that the said New York Company and said receivers thereof have failed and neglected to pay the instalment of rent due and payable by it on October 15, 1907, under the said lease of the Metropolitan Railway Company to the New York Company, Exhibit B, and have therein wholly made default and have also failed and neglected to pay the instalment of rent due on October 13th, 1907, under the lease of the Third Avenue Company to the Metropolitan Company and are in default thereunder as hereinbefore alleged.

XVII. It is provided among other things by said mortgage to your orator, Exhibit A, that upon filing a bill in equity or upon other commencement of judicial pro-

ceedings by your orator to enforce any right under said mortgage, your orator should be entitled, as a matter of right, to the appointment of a receiver of the railroads property and premises thereby mortgaged and pledged to your orator and of the tolls earnings, revenue, rents, issues, profits and other income thereof with such powers as the Court or Courts making such appointment should confer. Your orator alleges on information and belief that the property subject to the lien of the mortgage to your orator, Exhibit A, is inadequate security for the protection of the holders of the bonds issued thereunder, and unless receivers of such mortgaged property be appointed the interests of your orator and of the bondholders its represents will be greatly injured and the value of the security which your orator has for their protection will be further greatly impaired and diminished and that it is necessary for the protection of your orator and of the holders of said bonds that a receiver or receivers be appointed in this cause of the railroad property and premises mortgaged and pledged to your orator and of the tolls, earnings, revenue, rents, issues, profits, and other income thereof.

XVIII. Your orator has been requested by persons owning or representing a large number of the bonds issued under and secured by said mortgage to your orator dated March 21, 1902, to enforce their rights under said mortgage and to institute proceedings for the foreclosure of the property mortgaged and pledged thereunder.

XIX. Your orator further shows that no proceedings at law or suits in equity have been begun or commenced by your orator save as above mentioned or, as your orator is informed and believes, by any holder of any of the bonds secured by said mortgage dated March 21, 1902, or of any coupons thereto attached, to enforce the payment of the sums so covenanted to be

paid by the Metropolitan Company under the terms of the said mortgage and that the amount in controversy in this suit exceeds five thousand dollars.

XX. The said property mortgaged and pledged to your orator as aforesaid, is now in the possession of this Court through its receivers, appointed by its orders as hereinabove set forth, and upon application by your orator leave has been granted to your orator to include as defendants herein the said Adrian H. Joline and Douglas Robinson as receivers of the New York Company and the said Adrian H. Joline and Douglas Robinson as receivers of the Metropolitan Company.

In consideration whereof and for as much as your orator is remediless in the premises according to the strict rules of the common law and can only have relief in a Court of Equity where matters of this kind are properly cognizable, your orator therefore prays the aid of this Honorable Court:

1. That the said defendants may be required to make answer respectively unto all and singular the matters hereinbefore stated and charged as fully and particularly as if the same were herein expressed and they thereunto particularly interrogated but not under oath, answer under oath being hereby expressly waived.

2. That an account may be taken of all property subject to the lien of said mortgage dated March 21, 1902, and that said mortgage may be decreed to be a valid lien upon all and singular the railroads, railroad routes, estates, leaseholds, properties, premises, rights, privileges and franchises therein described, and upon all the stocks, bonds and other securities mortgaged and pledged to your orator or held by it subject to the provisions of said mortgage (save and except such property as has been released from the lien thereof as in this bill particularly described), that

an account be had of all improvements and additions made since the date of said mortgage upon and to any of said railroads or property, real and personal, and any and all equipment therefor and renewals or replacements of the same or of any part thereof or of the appurtenances and also of all and every other railroad which the defendant Metropolitan Street Railway Company has acquired or constructed since the date of said mortgage by means of the proceeds of any of the bonds secured by said mortgage and all power houses, real estate, equipment and other property, real and personal, appurtenant thereto, and that said mortgage or deed of trust may be declared to be a valid lien upon all such property.

3. That unless the defendant the Metropolitan Street Railway Company pay within a short day to be fixed by this Court into this Court or unto the Third Avenue Railroad Company or to the persons entitled thereto the rental due and payable on October 13th, 1907, under the Lease between The Third Avenue Railroad Company and the defendant Metropolitan Street Railway Company dated April 13, 1900, and unless the said defendant pay to your orator the costs, expenses and allowances of this suit in that behalf incurred or expended, then that the said defendant Metropolitan Street Railway Company and all persons claiming under or through it may be forever barred and foreclosed of and from any equity of redemption of and claim of and in the railroads, property and premises conveyed to your orator as Trustee and described in said mortgage dated March 21, 1902, and all other property declared to be subject to the lien of said mortgage; that all and singular the railroads, railroad routes, estates, leaseholds, properties, premises, rights, contracts, equipment, privileges and franchises mortgaged and pledged to your orator (save and except such property as has been released from the lien of said mortgage as aforesaid), and all stocks, bonds and

other securities mortgaged and pledged to your orator or held by it subject to the lien of said mortgage, and all other property which may be declared by this Court to be subject to the lien of said mortgage, may be sold in one parcel and as an entirety under a decree of this Honorable Court; that it may be decreed that upon such sale the whole of the principal sum of the bonds secured by said mortgage be immediately due and payable; that the proceeds of said sale may be brought into this Court to be administered by it as may be equitable and proper; that an account may be taken of the bonds secured by said mortgage dated March 21, 1902, and of the amount due and on said bonds for principal or interest or otherwise; and that in case of the insufficiency of such proceeds or of such portion thereof as may be applicable thereto to pay in full the amount of the principal and interest so due and unpaid upon the bonds secured by said mortgage dated March 21, 1902, then outstanding, a judgment may be rendered in this cause for such deficiency against the defendant Metropolitan Street Railway Company.

4. That pending this suit a receiver or receivers be appointed with the usual powers of receivers in like cases of the railroads, property and premises mortgaged and pledged in said mortgage to your orator, dated March 21, 1902, and of the tolls, earnings, income, rents, issues and profits thereof and that such directions may be made with respect to such receivership as may be equitable and proper, and that pending this suit a writ of injunction may be issued out of and under the seal of this Honorable Court directing, commanding, enjoining and restraining the said defendant Metropolitan Street Railway Company, its officers, directors and agents and all other persons whomsoever from interfering with, transferring, selling or disposing of any of the property of the said Metropolitan Street Railway Company under the control of said receiver or receivers and from selling, transferring, con-

veying or otherwise disposing of or encumbering any of the property, rights or franchises of the said Metropolitan Street Railway Company.

5. That your orator may have such other and further relief in the premises as may be just and equitable and as to your Honors shall seem just.

May it please your Honors to grant to your orator a writ or writs of subpœna to be directed to the said defendants Metropolitan Street Railway Company, New York City Railway Company, Adrian H. Joline and Douglas Robinson as Receivers of New York City Railway Company and Adrian H. Joline and Douglas Robinson as receivers of Metropolitan Street Railway Company, The Pennsylvania Steel Company and The Degnon Contracting Company, therein and thereby commanding them and each of them at a certain time and under a certain penalty therein to be named, to be and appear before your Honors in this Honorable Court then and there severally to answer all and singular the matters aforesaid, but not under oath, answer under oath being hereby expressly waived, and to stand to abide and perform such other and further orders or decrees as to your Honors shall seem meet.

MORTON TRUST COMPANY,
BY H. M. FRANCIS.
Secretary
Complainant.

(SEAL)

BRONSON WINTHROP,
Solicitor for Complainant and of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York,
CITY & COUNTY OF NEW YORK, } ss.:

HARRY M. FRANCIS being duly sworn deposes and says, that he is the Secretary of Morton Trust Company, the above named complainant; that he has read the foregoing bill of complaint and knows the contents

thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief and as to those matters he believes the same to be true; that the seal affixed to said bill of complaint is the corporate seal of said complainant and was so affixed by its authority.

H. M. FRANCIS.

Sworn to before me this 9th day of November, 1907.

E. J. BLEECKER,
Notary Public,
Richmond Co.
Certificate filed in New York Co.

(SEAL)

Filed 9th November, 1907.

Exhibit A referred to in the foregoing bill of foreclosure of the Morton Trust Company:

(A copy of the Mortgage of the Metropolitan Street Railway Company dated March 21, 1902, which is the same as Schedule B attached to Exhibit D hereto annexed.)

Exhibit B referred to in the foregoing bill of foreclosure of the Morton Trust Company:

(A copy of the Lease of the Metropolitan Street Railway Company to the Interurban Street Railway Company, which is the same as Schedule A attached to Exhibit D hereto annexed.)

Exhibit C referred to in the foregoing bill of foreclosure of the Morton Trust Company:

(A copy of the bill, answer, and order appointing receivers in the suit of the Pennsylvania Steel Company against the New York City Railway Company, annexed to this return as Exhibits A, B, and C.)

Exhibit D referred to in the foregoing bill of foreclosure of the Morton Trust Company:

(A copy of the petition of the Metropolitan Street Railway Company and of the order extending the

receivership to the properties of that company, annexed to this return as Exhibits D and E.)

Exhibit E referred to in the foregoing bill of foreclosure of the Morton Trust Company :

(A copy of the bill of complaint of the Morton Trust Company, which is the same as that annexed to this return as Exhibit H.)

Exhibit F referred to the foregoing bill of foreclosure of the Morton Trust Company :

(A copy of the order appointing receivers under the bill of complaint of the Morton Trust Company, annexed to this return as Exhibit J.)

Exhibit G—Referred to in the Foregoing Bill of Forelosure of Morton Trust Company.

THIS INDENTURE, made the thirteenth day of April, in the year nineteteen hundred, between THE THIRD AVENUE RAILROAD COMPANY, party of the first part, and METROPOLITAN STREET RAILWAY COMPANY, party of the second part, WITNESSETH : Parties.

WHEREAS, the parties hereto are street surface railroad companies organized and existing under the laws of the State of New York ; and

WHEREAS, the party of the first part owns and operates street surface railroads and railroad routes in the City of New York, beginning at the intersection of Park Row and Broadway, thence extending along Park Row, the Bowery, Third Avenue, to the Harlem River ; also extending from the North River at the foot of 130th Street, thence through 130th Street, Manhattan Street and 125th Street to the East River ; also extending from 125th Street through Amsterdam Avenue to the terminus of said avenue ; and Routes.

WHEREAS, said party of the first part also owns the following pieces or parcels of land, with the buildings Real Estate.

and improvements thereon, situated, lying and being in the City of New York and State of New York:

1. Power house and depot at the Bowery, Bayard and Elizabeth Streets, being a lot of land one hundred feet on the Bowery and Elizabeth Street, and two hundred feet on Bayard street.

2. Power house and depot at Third and Second Avenues, 65th and 66th Streets, being a lot of land two hundred feet ten inches on Third and Second Avenues, and six hundred and ten feet on 65th and 66th Streets.

3. Depot on Third and Lexington Avenues, 129th and 130th Streets.

4. Power house and depot on Amsterdam Avenue, 128th and 129th Streets.

5. Car house on 129th and 130th Streets, east of Tenth Avenue.

6. Power house and depot at Amsterdam Avenue, between 185th and 186th Streets.

7. Power house and depot at Kingsbridge Road and Harlem River, 216th and 218th Streets.

Stocks owned.

AND WHEREAS, the party of the first part is the lawful owner of the following amounts of the capital stock of the following-named railroad companies (hereinafter referred to as "Controlled Companies"), all of which are operating, or were organized to operate, street railroads in said City of New York, or in the portion of Westchester County, in said State of New York, which is adjacent to said City of New York:

NAME OF COMPANY.	Total issued capital.	Amount owned by Railroad Company.
Union Railway Company of New York City	$2,000,000	$2,000,000
Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company	$2,500,000	$1,671,100
Dry Dock, East Broadway and Battery Railroad Company	$1,200,000	$1,128,700
Kingsbridge Railway Company	$8,600	$8,600

AND WHEREAS, said Union Railway Company of New York City is the lawful owner of the following amounts of the stock of the following-named railroad companies (likewise hereinafter referred to as "Controlled Companies"), all of which are operating, or were organized to operate, street railroads in said City of New York, or in said portion of Westchester County adjacent thereto: Stocks controlled.

Name of Company.	Total issued capital.	Amount owned by Union Railway Company.
The Yonkers Railroad Company	$1,000,000	$992,500
Westchester Electric Railroad Company	$500,000	$500,000
Southern Boulevard Railroad Company	$250,000	$248,360
Tarrytown, White Plains and Mamaroneck Railway Company	$300,000	$300,000

Now, therefore, the party of the first part, in consideration of one dollar, paid by the party of the second part, the receipt whereof is hereby acknowledged, and the covenants and agreements hereinafter contained to be kept and performed by the party of the second part, has granted, leased and demised and doth by these presents grant, lease and demise to the party of the second part, and its successors, all the railroads of the party of the first part hereinbefore mentioned or hereafter acquired or to be constructed during the pendency of this lease, together with all the franchises, rights, powers and privileges of the party of the first part, to maintain, construct and operate railroads; also all the benefits and rights arising from all or any contracts, leases or agreements which the party of the first part now has or may hereafter be entitled to; also all the lands and tenements, above described, and all easements, fixtures, personalty and property of every description of the party of the first part, which Grant.

franchises, rights and property so leased and demised are subject to the various burdens and conditions by which they are held by the party of the first part.

This lease includes not only all the property of the party of the first part on the date when the same takes effect, but all subsequent additions as the result of purchase, or merger or consolidation with any of the Controlled Companies or any other corporations, or otherwise, including all connections, extensions and branches of the existing railroad or railroads now or which may be hereafter constructed, and all leased lines connected therewith, and all rights and franchises of the party of the first part, to make connections, extensions, branches and leases of other lines, and all extensions of the franchises of the party of the first part to construct, maintain and operate a railroad, and all poles, trolleys, conduits, feeders, cables, wires and machinery for producing and distributing electrical or other power, and all cars, equipment or other personalty hereafter acquired by the party of the first part.

Term of lease.

TO HAVE AND TO HOLD the same and each and every part thereof unto the party of the second part and its successors for the full term of nine hundred and ninety-nine years from the day of the date hereof, as the same may have been acquired by the party of the first part, to be used, maintained and operated by the party of the second part, in accordance with the requirements of the Charter, and subject to the conditions of the grants to the party of the first part; and subject to the provisions of this agreement the said party of the first part doth also hereby grant to the party of the second part the control of the expenditure of the moneys belonging to the party of the first part at the time of the taking effect of this lease, which are in the treasury of the party of the first part, whether on deposit or otherwise, and of all rights of action for the collection of money, and also all rights of action for the enforcement of rights or privileges for the construction, maintenance or operation of a railroad which are

proper or essential to such construction, maintenance or operation.

Sale of Income Bonds.

The party of the first part, also for like consideration, has sold, assigned, transferred and set over, and by these presents does hereby sell, assign, transfer and set over to the party of the second part three hundred and fifty-seven (357) Second Mortgage $1,000 Income Bonds of the Forty-Second Street, Manhattanville and St. Nicholas Avenue Railway Company, dated July 1, 1885, and bearing interest at the rate of six (6) per cent. per annum, payable as earned; also the subscription on behalf of the party of the first part for the balance of the authorized capital of the Kingsbridge Railway Company of one million dollars, and the shares of capital stock in the respective Controlled Companies hereinbefore first enumerated which are or may hereafter be owned by it, together with all right, title and interest in law or in equity which the party of the first part has in and to said bonds and shares of capital stock and said subscription, and hereby agrees to make specific transfers of the certificates of said stock upon the ratification and approval of this lease by the stockholders of the respective parties, and to cause said transfers to be made upon the stock books of said corporations respectively; provided, however, that for and during the first four years of this lease the net earnings of said corporations applicable to the payment of dividends upon the said shares of capital stock shall be and form a part of the earnings of the party of the first part. The foregoing assignment and transfer of said bonds, subscription and shares of stock are subject, however, to the pledge thereof to the Morton Trust Company Trustee under the mortgage hereinafter described and to the rights of the said Trust Company as Trustee under said mortgage, and the party of the second part hereby agrees to and joins in such pledge.

Of Subscription and Stocks.

And it is hereby agreed by and between the parties to this instrument that from and after the date of the

execution and delivery of the said mortgage, the party of the second part, in reference to said bonds and stocks, shall have the same rights therein which under the terms and provisions of said mortgage are reserved to the party of the first part, and in all matters pertaining thereto and provided in said mortgage the party of the second part shall be and is hereby substituted in place and stead of the party of the first part as its assignee and as the purchaser and owner of said stocks and bonds and of all equity of redemption therein.

Lessee to maintain property.

And in consideration of the premises, the party of the second part has covenanted and agreed, and doth by these presents covenant and agree, for itself, its successors and assigns, with the party of the first part, its successors and assigns, that the party of the second part at all times during the continuance of this lease will maintain, manage, use and operate and keep in good working order, condition and repair, at its own expense, the entire line of the said demised railroad or railroads, and all extensions and branches thereof which are now or may hereafter be constructed, and all fixtures and appurtenances thereof which now are, or hereafter may be constructed; and also keep the personalty hereby demised in good working order, condition and repair, so that the traffic and business of said railroad shall be encouraged and developed and reasonable accommodation given to the public.

To pay Taxes, &c.

And said party of the second part further agrees that it shall and will pay, satisfy and discharge all Municipal, County, State or Government taxes and assessments, license fees or other charges of any description whatever, which during the term hereby granted, may be imposed upon the property hereby demised or any part thereof, or upon any additions or extensions thereof, or upon the lessor or its capital stock, franchises or business assessed by reason of the property and franchises hereby demised, or by reason of any future increase thereof or resulting from the use and operation by the lessee of the property hereby

demised, or from any extensions and additions thereto, or the construction of other lines in connection therewith.

The intention of the parties hereto being that the rents hereby agreed to be paid by said party of the second part shall not be in anywise impaired or diminished by any lien, assessment, tax or charge upon the demised property, real or personal, or upon any conditions or extensions thereof, or upon the lessor or lessee by reason thereof.

Surrender.

The party of the second part further agrees that it will deliver up said railroad or railroads and all buildings, fixtures and appurtenances at the expiration of the lease or whenever the same shall become inoperative, in good order and repair, and will pay therefor to the party of the first part an annual rental, as follows :

To pay Dividends.

For a term of four years from the date of this lease a sum equal in the aggregate to the net earnings from the operation of the railroad hereby leased, and of the railroads of the Controlled Companies less the proportion thereof applicable to the shares of stock not owned by the party of the first part. Said net earnings shall be ascertained by deducting from the gross earnings, operating expenses, taxes accrued and proportionately chargeable to the period aforesaid, interest upon the bonds of the party of the first part, and of the Controlled Companies ; repairs, replacements, expenses of litigation and all judgments recovered for damages arising from the operation of the said railroads during said period.

Proper books of account shall be kept by the party of the second part, showing the gross earnings from operation and an itemized account of the foregoing charges, which shall at all times be open to the inspection of the stockholders. From and after the expiration of said four (4) years the party of the second part will pay to the party of the first part quarter yearly a dividend upon the outstanding capital stock of the party of the first part at the rate of (5) per centum per annum for a period of two (2) years ; from

and after the expiration of said two (2) years, for a period of four years thereafter, at the rate of six (6) per centum per annum; and from and after the expiration of said four (4) years at the rate of seven (7) per centum per annum during the remainder of the term of said lease. The rentals and dividends herein provided for are based upon the present issued capital stock of the Third Avenue Railroad Company, viz., $16,000,000, and such rentals and dividends shall not be increased in case of the issue of additional stock by such Company unless such increase be expressly consented to in writing by the party of the second part. The party of the first part hereby agrees that none of its stock in addition to said $16,000,000 shall be issued without such express written consent of the party of the second part. The party of the second part may at its option pay the rentals or dividends directly to the holders of the capital stock of the party of the first part, and may enter into agreements with any holders of such stock for the payment of dividends to, and guaranteeing the payment of dividend to, the holders of such stock at the rate specified in this contract, but no such agreement shall be made which shall not be open to the holders of all of the then outstanding stock of the party of the first part which shall have been issued with the consent of the party of the second part as aforesaid.

To replace property.

And the party of the second part further covenants with the party of the first part, that it will replace any part of the demised property which may be destroyed by fire or other cause and will at the termination of this lease, or whenever the same ceases to be operative, surrender the franchises, rights and privileges aforesaid, unimpaired by any act or default of the party of the second part.

Indemnity against suits and judgments.

And the party of the second part further covenants and agrees after the expiration of the first four years of this lease to indemnify and save harmless the party of the first part from all expenses of prosecution or defence of any action or legal proceeding which shall

be based upon a cause of action accruing after the expiration of said four years, and also pay any judgment that may be recovered against the party of the first part upon a cause of action so accruing, which may arise from the operation of the railroad or railroads of the party of the first part, and that it will indemnify and save harmless the party of the first part from all claims growing out of the maintenance and operation of said railroad after the expiration of said four years. But it is distinctly understood and agreed that during said period of four years all expenses of litigation and all judgments recovered or claims paid, which expenses, judgments and claims arise out of the operation of said railroad or railroads, shall be paid from the earnings of the road and charged to the operating expenses thereof.

Re-deliver property or substitutes.

The party of the second part also covenants and agrees that it will at the termination of this lease or when for any cause it may cease to be operative, transfer, deliver and return to the party of the first part in good condition, the horses, harnesses, cars, tools, implements, machinery, equipment, stable equipments, office furniture and fixtures and all property of every kind leased to and used by the party of the second part in the maintenance and operation of the railroad or railroads aforesaid, except that which is hereby absolutely transferred to the lessee or which has passed from existence by death or destruction or other cause, and shall also deliver the substitutes, increments and additions provided or made by the party of the second part; and the substitutes for the property impossible to deliver by reason of death or destruction shall be equal in value to that for which they are substituted.

Lessor to do certain corporate acts.

And in consideration of the premises, the party of the first part for itself, its successors and assigns, covenants with party of the second part, its successors and assigns, that the party of the first part and its successors, whenever required by the party of the second part or its successors, during the continuance

of this lease, shall do and perform any and every corporate act which may be necessary, useful or appropriate to secure to the party of the second part or its successors, the full enjoyment of the demised premises, including the existing road or roads and any and all connections, extensions and branches and the right to construct, maintain and operate any connections, extensions or branches which the party of the second part may desire to construct and operate of every franchise, right, easement, power and privilege connected therewith or appertaining to the same, including its right to a change of motive power and all other rights and powers, now possessed, or which may be hereafter possessed, by the party of the first part or its successors, and that it will maintain its corporate organization for the purposes hereof, and will apply for all such connections, extensions and branches and changes of motive power as the party of the second part may reasonably demand, all expenses incurred therefor by the party of the first part to be borne by the party of the second part, but the expenses of the maintenance of the corporate organization of the party of the first part shall not exceed the sum of twenty-five hundred dollars annually.

Lessee to pay expense of maintenance.

And the party of the first part further covenants and agrees that it will hereafter at any time, upon the request of the party of the second part, give, make, execute and deliver such further and other conveyances and assurances, papers and instruments as may be necessary or proper to carry into full force and effect all the objects and purposes of this indenture ; that it, the party of the first part, is well and lawfully possessed of the premises hereby demised and has full power to convey and lease the same as aforesaid, and that the same, in the quiet enjoyment of the party of the second part, the party of the first part shall and will warrant and defend.

Lessor to execute further instruments.

And the party of the first part further covenants and agrees that the party of the second part shall at all times during this lease have the full and exclusive right

Lessee to regulate fares.

to manage, use and control said demised property, and to regulate and determine the rates of toll and charges of transportation over the whole or any part of said demised railroad and premises, and to charge and collect the same and appropriate the same to its own use, and shall have, use, exercise and enjoy all the rights, powers and authority, of the party of the first part in that behalf, and all rights, powers, easements and privileges, now possessed or which may hereafter be acquired by the party of the first part necessary or convenient to the construction, maintenance, use, operation, possession, enjoyment and management of said railroad or railroads and any and all connections, extensions and branches thereof which can or may be lawfully exercised and enjoyment under its charter and the laws applicable thereto in or about or in connection with said demised property and in the maintenance and operation thereof.

Lessee to act as attorney.

And to enable the party of the second part to beneficially enjoy said property, rights, privileges, and benefits herein demised, mentioned and specified, the party of the first part hereby appoints the party of the second part, its successors and assigns, its attorney irrevocable, with full power and right, at the expense of the party of the second part, to use the name of the party of the first part in and about the business, maintenance, operation and use of said demised property, with power to make any and all contracts in proper furtherance of the objects hereinbefore set forth, with any person or corporation in the name of the party of the first part and under its corporate seal or otherwise, and in its name, and under its corporate seal to make and file certificates, apply for and receive consents and take all necessary proceedings for the construction, maintenance and operation of such extensions or branches of said railroad or railroads as said party of the second part shall desire, and generally to do all other acts and things in and about the premises which the party of the first part might lawfully do, and at the expense of the party of the second part

To file certificates.

To defend suits.

to use the name and seal of the party of the first part, in and about any legal proceedings and suits either at law or in equity, as to the party of the second part may seem necessary and requisite in carrying out the objects and intent of this indenture.

Lessee's agreement for guaranty of bonds.

WHEREAS, the party of the first part, with the consent of its stockholders, owning more than two-thirds of its capital stock, and of the Board of Railroad Commissioners of the State, has executed and delivered, or is about to execute and deliver, to the Morton Trust Company, as trustee, a mortgage known as its First Consolidated Mortgage, to secure the payment of its bonds issued and to be issued thereunder, to an amount not exceeding in the aggregate fifty million dollars; and

WHEREAS, a part of said issue, amounting in the aggregate to thirty-five million dollars, has been or is about to be issued and, at the request of the party of the second part, purchased by Messrs. Kuhn, Loeb & Company, bankers in the City of New York, and which purchase is conditioned upon the guarantee of the payment of the principal and interest of said bonds by the party of the second part;

NOW, THEREFORE, as part of the consideration of this lease, and to induce the purchase of said bonds as aforesaid, and as an additional covenant upon the party of the second part, the said party of the second part hereby agrees to, and by these presents does hereby, unconditionally guarantee the prompt payment of the principal and interest of all the bonds of the party of the first part issued, and to be issued, under the mortgage aforesaid, which have been issued before this lease takes effect or which shall be issued hereafter.

And the party of the second part does hereby covenant and agree with said Morton Trust Company, as Trustee of said mortgage, and with each present and future holder of said bonds issued, or to be issued, under said mortgage, that in default of payment by the

party of the first part it will pay the principal and interest of each bond that has been or may be issued under said mortgage, and hereby guarantees to each such present and future holder of said bonds the prompt payment of the principal and interest thereon. The party of the second part shall cause its guarantee to be duly placed upon each bond issued or to be issued or reissued under said mortgage, and shall, if and when requested by said Morton Trust Company, execute and deliver to it as Trustee of said Mortgage, a separate agreement embodying the guaranty of said bonds.

The party of the second part hereby covenants that said guarantee shall be, and it is hereby declared to be, unconditional, and not be dependent upon, any act by the party of the first part, and not liable to be affected by any default of the party of the first part.

Lessee to disburse proceeds of bonds sold.

AND, WHEREAS, the party of the first part has incurred a large floating debt in the reconstruction of its said railroad and the railroads of the Controlled Companies hereinbefore named, and in making a change of motive power upon said railroads and has entered into contracts for the performance of such work, and further expenditures for the improvements upon and additions to the property of the party of the first part will, from time to time, be necessary or advisable, it is hereby agreed and understood that the proceeds of the sale of the bonds secured to be paid by the mortgage to the Morton Trust Company, as aforesaid, and the payment of which is guaranteed by the party of the second part as a part of the consideration of this lease shall be applied as provided and agreed in Article Second of said mortgage, and said article, so far as it is applicable to the proceeds of said bonds, is thereby referred to as and made part of this instrument: and

WHEREAS, it is in substance provided in subdivision (1) of article second of said mortgage, that such of the proceeds of the sale of thirty-five million dollars of bonds as are not applied to the payment or acquisition of floating debt, and to the lawful expenses

incurred and to be incurred in carrying through the readjustment of the affairs of the Railroad Company, in pursuance of which this mortgage is created, shall be applied by the Railroad Company to improvements, in additions to, or extensions, of the property of the Railroad Company or of the property of its Controlled Companies, or to the purchase or construction of other street railroads, or the purchase of other property which shall be and become subject to the lien of said mortgage; and

WHEREAS, it is further provided in subdivision (3) of article second of said mortgage, as to the remainder of said bonds, viz.: one million two hundred thousand dollars face value thereof, that the Trustee shall, from time to time, deliver said remaining bonds to said Railroad Company, or its order, and that the proceeds of the sale of said bonds shall be applied to improvements upon, additions to, or extensions of its property, or of the property of the Controlled Companies, or to the acquisition of street railroads or other properties which shall be subject to the lien of said mortgage;

NOW, THEREFORE, it is hereby covenanted and agreed by and between the parties to these presents as follows: The expenditure and application of the said bonds, or the proceeds thereof, referred to in the first and third subdivisions of article second of said mortgage above quoted, shall be made by and under the sole and exclusive direction of the party of the second part, and said bonds or the proceeds thereof applicable under the terms and provisions of said mortgage to improvements in, additions to, or extensions of the property of the party of the first part, or of the property of its Controlled Companies, or to the purchase or construction of other street railroads or of other property, shall be delivered or paid to the party of the second part, as and when the party of the second part shall make such improvements, additions, extensions, purchases and constructions which, under said mortgage,

are authorized to be made or paid for out of the proceeds of said bonds.

The party of the first part, as a part of the consideration of this lease, hereby grants to the party of the second part control of the expenditure of all and every of the bonds, or the proceeds thereof which, under the terms of said mortgage, are applicable to the purposes expressed in said mortgage as aforesaid, and hereby authorizes and empowers the party of the second part, as its irrevocable attorney, to apply them to the purposes enumerated in the said mortgage as aforesaid.

Lessor to deposit proceeds of bonds.

The party of the first part shall, if so requested in writing by the party of the second part, deposit the unexpended balance of the proceeds of the sale of said $35,000,000 of bonds, and also said $1,200,000 of bonds, or the proceeds of the sale thereof, with a Trust Company or Incorporated Bank of the City of New York, as Trustee, to be held and disposed of by such Trustee in accordance with the provisions of this contract. Such Trustee may at any time sell any of such bonds deposited with it on the written order of the party of the second part, in which case it shall receive the proceeds of said sale and hold the same subject to the terms of this contract.

Lessee to certify expenditures

It is further agreed by and between the parties hereto, that whenever the party of the second part, in the exercise of the power herein conferred, shall expend any money or incur or contract any indebtedness for any of the purposes expressed in the mortgage aforesaid, that it will certify the same by and under the hand of its President or Vice-President and its corporate seal, setting forth the amount and purpose of the expenditure made or indebtedness incurred, and that such expenditures were made or such indebtedness was incurred for purposes specified in said mortgage. Upon receipt of such certificate, the party of the first part, or such Trustee, as the case may be, shall pay over the sum so certified to have been expended, or a sum equal to the indebtedness so certified to have been incurred, to the party of the second part out of or from any proceeds of the sale of bonds

Lessor to pay.

secured by said mortgage purchased by Kuhn, Loeb & Company as aforesaid applicable thereto, and after the proceeds of the sale of Thirty-five million dollars of bonds heretofore recited to have been purchased by Kuhn, Loeb & Company shall have been exhausted, then, upon the same or like certificate the party of the first part or the said Trustee as the case may be shall pay the sum expended or indebtedness incurred by the delivery of an equal amount of said bonds, viz., the one million two hundred thousand dollars of said bonds specified in subdivision (3) of Article Second of said mortgage hereinbefore quoted, or in case of the sale of such bonds by the payment of such amount in cash from the proceeds thereof. The certificate of the President or Vice-President of the party of the first part shall be full protection to the Trustee for any action taken upon the strength thereof, and may be accepted by the Trustee as conclusive evidence of any fact therein stated.

Lessor to issue additional bonds.

Whenever it shall be deemed by the party of the second part expedient to extend the line or lines of the railroad hereby demised or to acquire additional real estate or construct additional buildings for the operation of said railroad, or to change the motive power upon said railroad, and the proceeds of the sale of said $35,000,000 of bonds and said $1,200,000 of bonds have been exhausted, then upon the request of the party of the second part the party of the first part shall authorize, execute and deliver to the party of the second part the negotiable bonds of the party of the first part in the usual form for the amounts, the expenditure of which shall be required for such extension, acquisition, construction or change, and upon the like request of the party of the second part, shall secure such bonds by a mortgage or mortgages upon all its property and franchises, but such bonds when issued shall be applied solely to the purposes for which the same are issued.

Lease subject to debts, &c.

This lease is made subject to all debts and liabilities of the party of the first part, except debts due or lia-

bilities incurred to the party of the second part. The payment of all bonds which shall be issued by the party of the first part under the mortgage to the Morton Trust Company hereinbefore referred to, when issued and disposed of as hereinbefore provided, or as provided in said mortgage or in this lease, shall be guaranteed by the party of the second part as hereinbefore provided, and as a part of the consideration of this lease. The party of the second part shall, from time to time, do all the things which shall be necessary to enable the party of the first part to comply with the provisions of said mortgage, and shall from time to time provide the party of the first part with such funds as shall be necessary to retire or acquire, in accordance with the terms of said mortgage, the underlying bonds and funded obligations therein mentioned, and for all funds so provided the party of the second part shall receive an amount of the reserved bonds secured by said mortgage which it is by the terms thereof proper to issue on account of the particular underlying bonds or obligations to be retired or acquired.

Lessor to provide renewal bonds.

Whenever any of the funded debts of the party of the first part (the principal or interest of which has been or may hereafter be guaranteed by the party of the second part) shall become due and payable, the party of the first part shall, upon the request of the party of the second part, provide for the renewal or consolidation thereof by the issue of renewal or consolidation bonds in the customary form, and upon like request shall secure the same by mortgage or mortages upon all its property and franchises.

Lessor to re-enter on default.

It is further mutually agreed, that in case of default in the payment of the rent as aforesaid, or failure by the party of the second part to comply with all or any of the terms of this lease, and such default shall continue for a period of six months, the party of the first part shall have the right to re-enter and re-possess all the demised property, together with the improvements and betterments thereon or thereto appertaining,

which right shall not lapse or cease to exist on account of any waiver or condonation of another prior default by implication or agreement, and such re-entry shall not impair the claim of the party of the first part for lawful damages for any defaults of the party of the second part.

Lessor to maintain organization.

The party of the first part, its successors and assigns, covenants with the party of the second part, and its successors and assigns, that it will maintain its corporate organization and existence, and will take all necessary steps to secure such extensions of its corporate existence and charter as it shall at any time be entitled to under the laws of the State of New York, to the end that the party of the second part shall be fully secured in the possession and enjoyment of the property hereby demised to the full meaning and intent of the parties hereto.

This lease is subject to such rights as the Manhattan Railway Company has or may have in reference to the transfer of passengers under an agreement now existing between the said Manhattan Company and the party of the first part.

IN WITNESS WHEREOF, the said parties have caused their respective corporate seals to be affixed, and their respective corporate names to be subscribed, by theia President and Vice-Presidents respectively, to this indenture the day and year first above written.

THE THIRD AVENUE RAILROAD COMPANY,
By H. HART,
Vice-President.

[SEAL.]

Attest :
WILLIAM N. AMORY,
Secretary.

METROPOLITAN STREET RAILWAY COMPANY,
By H. H. VREELAND,
President.

[SEAL.]

Attest ;
CHARLES E. WARREN.
Secretary.

U. S. Revenue
Stamp $1.00
(Cancelled.)

STATE OF NEW YORK, }
City and County of New York, } ss. :

On this 16th day of April, A. D. 1900, before me personally came Henry Hart, to me known, who, being by me duly sworn, did depose and say that he resided in the City of New York and State of New York; that he is the Vice-President of The Third Avenue Railroad Company, the corporation described in and which executed the foregoing instrument as grantor; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by the like order.

And the said William N. Amory, being duly sworn, did depose that he is the Secretary of said Railroad Company, the corporation described in and which executed the above instrument as grantor; that said Henry Hart is the Vice-President thereof; that he knows the corporate seal of said Company, and that by authority and direction of a resolution of the Board of Directors of said Railroad Company, the foregoing instrument was signed by Henry Hart as Vice-President and by deponent as Secretary of said Company, and the corporate seal of said company thereto affixed, and that the seal now affixed to said instrument is the corporate seal of said Company.

DANL. W. PATTERSON,
[SEAL.] Notary Public,
New York County.

STATE OF NEW YORK, }
City and County of New York, } ss. :

On this 16th day of April, A. D. 1900, before me personally came H. H. Vreeland, to me known, who, being by me duly sworn, did depose and say that he resided in the City of New York and State of New York; that he is the President of the Metropolitan

Street Railway Company, the corporation described in and which executed the foregoing instrument as grantee; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed the same thereto by the like order.

And the said Charles E. Warren, being duly sworn, did depose, that he is the Secretary of the said Metropolitan Street Railway Company, the corporation described in and which executed the above instrument as grantee; that said H. H. Vreeland is the President thereof; that he knows the corporate seal of said Company, and that by authority and direction of a resolution of the Board of Directors of said Railway Company the foregoing instrument was signed by H. H. Vreeland as President and by deponent as Secretary of said Company, and the corporate seal of said Company thereto affixed, and that the seal now affixed to said instrument is the corporate seal of said Company.

F. J. MARINELLI,
Notary Public,
New York County.

[SEAL.]

CERTIFICATE OF THE SECRETARY

OF

THE THIRD AVENUE RAILROAD COMPANY.

This lease and contract having been entered into by the directors of the Third Avenue Railroad Company, and of the Metropolitan Street Railway Company, under the corporate seal of each company, and a meeting of the stockholders of the Third Avenue Railroad Company having been called separately for the pur-

pose of taking the same into consideration, and due notice of the time and place of holding said meeting and the object thereof having been given by The Third Avenue Railroad Company, to the stockholders thereof, by written or printed notices stating the time, place and object of the meeting mailed to each of the persons in whose names the capital stock of said Company stood on the books thereof, at his post office address, or the legal representatives of such persons respectively, at least thirty days before the time of holding said meeting of such Company, and also published one a week for four weeks successively in the *Evening Post* and the New York *Times*, two newspapers published in New York County, where said Company has its principal office or place of business; and such meeting having been had pursuant to such notice, on the 17th day of May, 1900, and at the said meeting of stockholders, this contract or lease of the said directors having been submitted to the stockholders and considered, and a vote by ballot taken for the adoption or rejection of the same, each share of stock entitling the holder thereof to one vote;

NOW, THEREFORE, this is to certify that two-thirds and more of all the votes of stockholders cast in person or by proxy at such meeting were for the adoption of this lease and contract, and the same was approved by such vote.

IN WITNESS WHEREOF, I have hereunto affixed the corporate seal of the said The Third Avenue Railroad Company, and subscribed my name as Secretary, the 17th day of May, 1900.

[SEAL.]

W. N. AMORY,
Secretary.

CERTIFICATE OF THE SECRETARY

OF

METROPOLITAN STREET RAILWAY COMPANY.

This lease and contract having been entered into by the directors of the Third Avenue Railroad Company and of the Metropolitan Street Railway Company, under the corporate seal of each company, and a meeting of the stockholders of the Metropolitan Railway Company having been called separately for the purpose of taking the same into consideration, and due notice of the time and place of holding said meeting and the object thereof having been given by the Metropolitan Street Railway Company to the stockholders thereof by written or printed notices stating the time, place and object of the meeting mailed to each of the persons in whose names the capital stock of said company stood on the books thereof, at his post office address or the legal representatives of such persons respectively, at least thirty days before the time of holding such meeting of such company and also published once a week for four weeks successively in the *Evening Post* and The New York *Times*, two newspapers published in New York County, where said company has its principal office or place of business, and such meeting having been had pursuant to such notice on the 17th day of May, 1900, and at the said meeting of stockholders, this contract or lease of the said directors having been submitted to the stockholders and considered and a vote by ballot taken for the adoption or rejection of the same, each share of stock entitling the holder thereof to one vote;

NOW, THEREFORE, this is to certify that two-thirds and more of all the votes of stockholders cast in person or by proxy at such meeting were for the adoption

of this lease or contract and the same was approved by such vote.

IN WITNESS WHEREOF, I have hereunto affixed the corporate seal of said Metropolitan Street Railway Company, and subscribed by name as Secretary, the 17th day of May, 1900.

[SEAL.]

CHARLES E. WARREN,
Secretary.

Exhibit H. Referred to in the Foregoing Bill of Foreclosure of Morton Trust Company.

Agreement transferring Stocks and correcting Lease.

AGREEMENT, made the thirteenth day of May, in the year Nineteen hundred, between THE THIRD AVENUE RAILROAD COMPANY, party of the first part, and the METROPOLITAN STREET RAILROAD COMPANY, party of the second part, WITNESSETH :

WHEREAS, by a certain indenture of lease, dated April 13th, 1900, executed by and between the Third Avenue Railroad Company (hereinafter called the Railroad Company) and Metropolitan Street Railway Company (hereinafter called the Railway Company), it is recited that the Railroad Company is the lawful owner of the following amounts of the capital stock of the following named railroad companies, all of which are operating, or organized to operate, street railroads in the said City of New York, or in the portion of Westchester County, in the State of New York, which is adjacent to New York :

Name of Company.	Total Issued Capital.	Amount Owned by Railroad Company.
Union Railway Company of of New York City	$2,000,000	$2,000,000
Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company	2,500,000	1,671,100
Dry Dock, East Broadway and Battery Railroad Company	1,200,000	1,128,700
Kingsbridge Railway Company	8,600	8,600

and that the Union Railway Company of New York City is the lawful owner of the following amounts of the stock of the following named railroad companies, all of which are operating, or organized to operate, railroads in said City of New York, or in said portion of Westchester County adjacent thereto, all of which said railroad companies are referred to in said lease as "Controlled Companies":

Name of Company.	Total Issued Capital.	Amount Owned by Union Railway Company.
The Yonkers Railroad Company	$1,000,000	$992,500
Westchester Electric Railroad Company	500,000	500,000
Southern Boulevard Rail-Road Company	250,000	248,300
Tarrytown, White Plains and Mamaroneck Railway Company	300,000	300,000

AND, WHEREAS, said lease recites that it includes not only all the property of the Railroad Company at the date when the same takes effect, but all subsequent additions as the result of purchase or merger or con-

solidation with any of the Controlled Companies, or any other corporation, or otherwise; and,

WHEREAS, by the terms and provisions of said lease said Railroad Company sold, assigned, transferred and set over unto the Railway Company all the shares of capital stock in their the respective Controlled Companies hereinbefore first enumerated which were, at the date of said lease, owned by, or which should thereafter be owned by it; and

WHEREAS, subsequent to the date of said lease, to wit: on or about the ninth day of May, Nineteen hundred, the Railroad Company acquired by purchase from the Union Railway Company, all the shares of stock owned by said last named company in the Controlled Companies hereinbefore secondly enumerated, and said stocks are now owned by the Railroad Company and not by the Union Railway Company; and,

WHEREAS, it was the intention of the parties to said lease that the Railroad Company should sell and assign to the Railway Company all the shares of stock which it should own in any of the Controlled Companies on the date when such lease should take effect;

NOW, THEREFORE, in consideration of said lease, and of the sum of One ($1) dollar paid to the Railroad Company by the Railway Company, the receipt whereof is hereby acknowledged, and to carry out and to fully effectuate the intent of the parties to the said lease, the Railroad Company has sold, assigned, transferred and set over, and by these presents does hereby sell, assign, transfer and set over unto the Railway Company, the shares of capital stock in the respective Controlled Companies hereinbefore secondly enumerated, and which it acquired by purchase from the Union Railway Company as hereinbefore stated, and which now are owned by it, and all shares in the capi- Transfers Stocks.

tal stock of said Controlled Companies hereinbefore secondly enumerated, which it may hereafter acquire, together with all right, title and interest in law or in equity which the Railroad Company has and to said shares of capital stock.

The Railroad Company further agrees to make specific transfers of the certificates of said stock upon the ratification and approval of the lease by the stockholders of the respective parties, and to cause said transfers to be made upon the stock books of said corporations respectively; provided, however, that for and during the first four years of the lease, the net earnings of said corporations applicable to the payment of dividends upon the said shares of capital stock shall be and form a part of the earnings of the Railroad Company.

The foregoing assignment and transfer of said shares of stock are subject, however, to the pledge thereof to the Morton Trust Company, Trustee under the mortgage described in said lease, and to the rights of the said Trust Company as Trustee under such mortgage, and the Railway Company hereby agrees to and joins in the pledge of such shares of stock to the said Trustee.

And it is further agreed by and between the parties hereto, that all provisions in said lease contained in reference to the shares of stock in the respective Controlled Companies hereinbefore first enumerated, and the rights and interests of the respective parties thereunder shall be and they are hereby made applicable to the shares of stock in the respective Controlled Companies hereinbefore secondly enumerated.

Corrects Lease. AND, WHEREAS, it is recited in said lease, in reference to the proceeds of the sale of the bonds of the Railroad Company secured to be paid by the mortgage to the Morton Trust Company, the payment of which bonds is guaranteed by the Railway Company as a part of the consideration of said lease, that it is provided in sub-division 3 of Article Second of said mort-

gage as to a certain remainder of said bonds, viz.: $1,200,000, that the Trustee shall, from time to time, deliver said remaining bonds to said Railroad Company, or its order, and that the proceeds of the sale of said bonds shall be applied to the improvements upon, additions to or extensions of its property, or of the property of the controlled companies, or to the acquisition of street railroads or other properties, which shall be subject to the lien of said mortgage; and

WHEREAS, the amount of said remainder of said bonds is $1,557,000 instead of $1,200,000, as recited in said lease, as by reference to Article Second of said mortgage to the Morton Trust Company will more fully appear, and the parties hereto desiring to correct said error in said recital, and to express accurately the intent of the parties to said lease;

NOW, THEREFORE, in consideration thereof, and to carry out the intent of the parties, it is hereby further agreed that as to said remainder of said bonds, viz.: $1,557,000, face value thereof, that the Trustee under said mortgage shall, from time to time, deliver said remaining bonds to said Railroad Company, or its order, and that the proceeds of the sale of said bonds shall be applied to improvements upon, additions to or extensions of its property or of the property of the Controlled Companies, or to the acquisition of street railroads or other properties, which shall be subject to the lien of said mortgage.

AND IT IS FURTHER AGREED by and between the parties hereto that all the provisions in said lease contained in reference to said $1,200,000 of bonds, face value thereof, and to the application and expenditure thereof, or of the proceeds thereof, and to the duties of the Trustee under said mortgage in reference thereto, and to the rights and interests of the respective parties to the lease therein, shall be, and hereby are, made applicable to the said remainder of bonds,

included in said total of $1,557,000, face value thereof, and that said lease, wherever said remainder of bonds is mentioned therein, as being $1,200,000 is hereby corrected so as to read $1,557,000, face value thereof.

IN WITNESS WHEREOF, the said parties have caused their respective corporate seals to be affixed, and their respective corporate names to be subscribed by their President or Vice-President respectively, to this indenture, the day and year first above written.

THE THIRD AVENUE RAILROAD COMPANY,
[SEAL.] By H. HART,
Vice-President.

Attest:
W. N. AMORY,
Secretary.

METROPOLITAN STREET RAILWAY COMPANY,
[SEAL.] By H. H. VREELAND,
President.

Attest:
CHARLES E. WARREN,
Secretary.

STATE OF NEW YORK,
City and County of New York, } ss.:

On the 17th day of May, A. D. 1900, before me personally came HENRY HART, to me known, who, being by me duly sworn, did depose and say that he resided in the City of New York and State of New York; that he is the Vice-President of the Third Avenue Railroad Company, one of the corporations described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said

corporation, and that he signed his name thereto by the like order.

O. L. HOAGLAND,
Notary Public (184),
New York County.

STATE OF NEW YORK,
City and County of New York, } ss.:

On this 17th day of May, A. D. 1900, before me personally came H. H. VREELAND, to me known, who, being by me duly sworn, did depose and say that he resided in the City of New York and State of New York; that he is the President of the Metropolitan Street Railway Company, one of the corporations described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by the like order.

O. L. HOAGLAND,
Notary Public (184),
New York County.

(Endorsed):

THE THIRD AVENUE RAILROAD COMPANY

TO

METROPOLITAN STREET RAILWAY COMPANY.

LEASE AND ACCOMPANYING AGREEMENT.

STATE OF NEW YORK,
Office of the Secretary of State. }

Filed and recorded May, 1900.

J. B. H. MONGIN,
Deputy Secretary of State.

STATE OF NEW YORK,
Office of the Secretary of State, } ss.:

I have compared the preceding with the original Lease of The Third Avenue Railroad Company to Metropolitan Street Railway Company, filed and recorded in this office on the nineteenth day of May, 1900, and do HEREBY CERTIFY the same to be a correct transcript therefrom and of the whole thereof.

WITNESS my hand and the seal of office of the Secretary of State, at the City of Albany, this nineteenth day of May, one thousand nine hundred.

[SEAL.]

J. B. MONGIN,
Deputy Secretary of State.

Cancelled Revenue Stamp 10c.

STATE OF NEW YORK,
County of New York, } ss.:

I, WILLIAM SOHMER, Clerk of said County, and Clerk of the Supreme Court of said State for said County, do certify that I have compared the preceding with the original lease and accompanying agreement, the Third Avenue Railroad Company to Metropolitan Street Railway Company, filed May 19th, 1900, on file in my office, and that the same are correct transcripts therefrom, and the whole of such originals.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 21st day of May, 1900.

[SEAL.]

WILLIAM SOHMER,
Clerk.

Cancelled Revenue Stamp 10c.

Exhibit Q-2.

THE PRESIDENT OF THE UNITED STATES OF AMERICA, TO METROPOLITAN STREET RAILWAY COMPANY, NEW YORK CITY RAILWAY COMPANY, ADRIAN H. JOLINE AND DOUGLAS ROBINSON as Receivers of New York City Railway Company and ADRIAN H. JOLINE and DOUGLAS ROBINSON as Receivers of Metropolitan Street Railway Company, The Pennsylvania Steel Company and The Degnon Contracting Company, GREETING:

You are hereby commanded that you and each of you, personally appear before the Judges of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, in Equity, on the first Monday in December, A. D. 1907, wherever the said Court shall then be, to answer a bill of complaint exhibited against you in the said Court by Morton Trust Company, and do further and receive what the said Court shall have considered in that behalf. And this you are not to omit under the penalty on you and each of you, of two hundred and fifty dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, at the Borough of Manhattan, in the City of New York, on the 9th day of November, in the year of our Lord one thousand nine hundred and seven, and of the Independence of the United States of America, the one hundred and thirty-second.

JOHN A. SHIELDS,
Clerk.

BRONSON WINTHROP, ESQ.,
Solicitor for Complainant.

The defendants are required to enter appearance in the above case, in the Clerk's office of this Court, on or before the first Monday of December, 1907, or the bill will be taken *pro confesso* against them.

J. A. S.,
Clerk.

R

Exhibit Q 3.

I hereby certify, That on the 11th day of November, 1907, at the City of New York, in my District, I served the within Subpœna in Equity upon the within-named defendant Metropolitan Street Railway Company by exhibiting to Charles E. Warren as Vice President of said Company at No. 621 Broadway, New York City, the within original, and at the same time leaving with him a copy thereof.

I hereby further certify, That on the 11th day of November, 1907, at the City of New York, in my District, I served the within Subpœna in Equity upon the within-named defendant New York City Railway Company by exhibiting to Charles E. Warren as Secretary of said Company at No. 621 Broadway, New York City, the within original, and at the same time leaving with him a copy thereof.

I hereby further certify, That on the 11th day of November, 1907, at the City of New York, in my District, I personally served the within subpœna in Equity upon the within-named defendants Adrian H. Joline and Douglas Robinson as Receivers of New York City Railway Company at No. 621 Broadway, New York City, by exhibiting to each of them the within original, and at the same time leaving with each of them a copy for each thereof.

I hereby further certify, That on the 11th day of November, 1907, at the City of New York, in my District, I personally served the within Subpœna in Equity upon the within-named defendants Adrian H. Joline and Douglas Robinson as Receivers for the Metropolitan Street Railway Company at No. 621 Broadway, New York City by exhibiting to each of them the within original, and at the same time leaving with each of them a copy for each thereof.

I hereby further certify, That on the 11th day of November, 1907, at the City of New York, in my District, I served the within Subpœna in Equity upon the

within-named Defendant The Pennsylvania Steel Company by exhibiting to John C. Jay, Jr., at No. 71 Broadway, New York City, Managing Agent of said The Pennsylvania Steel Company and duly and properly designated for the purpose of receiving service for the said The Pennsylvania Steel Company by a writing under seal and a consent both duly made and filed in the office of The Secretary of State of the State of New York the within original, and at the same time leaving with him a copy thereof.

I hereby further certify, That on the 11th day of November, 1907, at the City of New York, in my District, I served the within Subpœna in Equity upon the within-named defendant, The Degnon Contracting Company by exhibiting to N. J. Haywood as Secretary of said Company at No. 60 Wall Street, New York City the within original, and at the same time leaving with him a copy thereof.

Dated New York, November 12th, 1907.

WILLIAM HENKEL,
U. S. Marshal,
S. D. N. Y.

(ENDORSED) U. S. Circuit Court, Southern District N. Y., Filed Nov. 12, 1907, John A. Shields, Clerk.

Exhibit S.

Order Appointing Receivers Pending Suit for Foreclosure.

CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

MORTON TRUST COMPANY, Complainant, AGAINST METROPOLITAN STREET RAILWAY COMPANY, NEW YORK CITY RAILWAY COMPANY, ADRIAN H. JOLINE and DOUGLAS ROBINSON, as Receivers of New York City Railway Company, ADRIAN H. JOLINE and DOUGLAS ROBINSON, as Receivers of Metropolitan Street Railway Company, THE PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY, Defendants.	In Equity. Eq. No. 2-33.

This cause came on this day to be heard on motion of the complainant for the appointment of Receivers as prayed in the bill of foreclosure filed in this cause on November 9th, 1907.

On said bill, after hearing Bronson Winthrop, Esq., for complainant, James Byrne, Esqr., for the defendants, The Pennsylvania Steel Company and The Degnon Contracting Company, and Arthur H. Masten, Esq., for defendants Adrian H. Joline and Douglas Robinson as receivers, and notice of this application

having been duly given to Metropolitan Street Railway Company and New York City Railway Company, it is, on motion of Bronson Winthrop, Esq., solicitor for complainant,

ORDERED, ADJUDGED AND DECREED that Adrian H. Joline and Douglas Robinson, be and they hereby are, appointed under the bill of complaint in this cause, filed on November 9th, 1907, receivers of all the railroads, properties and premises, mortgaged and pledged under the mortgage dated March 21, 1902, made by the defendant Metropolitan Street Railway Company to the complainant, Morton Trust Company, as trustee, described in the bill of complaint in this cause, and of all the tolls, earnings, income, rents, issues and profits of said railroad, property and premises; that said receivers be and they hereby are authorized to run, manage, and operate the said railroads and properties, to collect the rents, income, tolls, issues and profits of said railroads and property, to exercise the authority and franchises of said defendant, and discharge its public duties, acting in all things subject to the supervision of this Court.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said receivers be and they hereby are authorized in their discretion to employ and discharge and fix the compensation of all attorneys, managers, superintendents, agents and employees, and to take such payments and disbursements as may be needful and proper in so doing; that the said receivers be and they hereby are fully authorized and empowered to institute and prosecute in their own names or in the name of said Metropolitan Street Railway Company, all such suits, as may be necessary in their judgment for the proper protection of the trust estate, and the discharge of their trust, and likewise to defend all actions instituted against them as receivers, and also to appear in and continue or defend any suits now pending in any court to which said defendant Metropolitan Street Railway Company is a party, the continuation or defense of which will, in the judgment of said receivers, be necessary for

the proper protection of the trust estate, or for the interest and rights of creditors connected therewith.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said receivers be and they are hereby authorized in their discretion from time to time out of the funds coming into their hands to pay the expenses of operating the said properties and executing their trusts, and to make such repairs to said properties and premises as in their judgment may be necessary in order safely to conduct said operation under this order.

The said receivers are hereby required to open proper books of account wherein shall be stated the earnings, expenses, receipts and disbursements of their said trust and preserve proper vouchers for all payments made by them on account thereof.

IT IS FURTHER ORDERED that the said receivers shall forthwith file in the office of the clerk of this Court the consent of the surety on the bonds of the said receivers already given in the suit of The Pennsylvania Steel Company and The Degnon Contracting Company against New York City Railway Company and Metropolitan Street Railway Company, that the said bonds shall apply and the liability of the said surety shall continue and exist also in this suit and in respect of any and all acts and transactions of the said receivers whether under their original appointment or under their appointment in this suit or in lieu thereof, that the said receivers file in this suit their joint and several bond in the sum of two hundred and fifty thousand dollars, conditioned that they will well and truly perform the duties of their office and duly account for all moneys or property which may come into their hands and abide by and perform all things which they shall be directed to do with sufficient sureties to be approved of by a judge of this Court.

AND IT IS FURTHER ORDERED that each and every of the officers, directors, agents and employees of said defendant, Metropolitan Street Railway Company, be and they are hereby required and commanded forth-

with upon demand of the said Receivers or their duly authorized agent, to turn over and deliver to said receivers or their duly constituted representative, any of the said property in his or their hands or under his or their control, provided, however, that the complainant shall be entitled to retain possession of any stocks, bonds or securities pledged under said mortgage.

And said defendant Metropolitan Street Railway Company, its officers, directors, agents and employees and all other persons claiming to act by, through or under said defendant, and all other persons whomsoever, are hereby enjoined from interfering in any way whatever with the possession or management of any part of the property over which the receivers are hereby appointed, or interfering in any way to prevent the discharge of their duties.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the suit of Morton Trust Company, complainant, against Metropolitan Street Railway Company, New York City Railway Company, Adrian H. Joline and Douglas Robinson, as receivers of New York City Railway Company, Adrian H. Joline and Douglas Robinson, as receivers of Metropolitan Street Railway Company, The Pennsylvania Steel Company and The Degnon Contracting Company, defendants, in which suit the bill of complaint was filed in this Court on October 9, 1907, be and the same hereby is consolidated with this suit and all orders and proceedings had therein are hereby made the orders and proceedings in this cause, the consolidated cause to proceed under the title of this cause, as above recited and set forth, and any party in interest may apply for further direction.

Dated New York, November 19th, 1907.

E. HENRY LACOMBE,
U. S. C. J.

Filed 19th November, 1907.

Exhibit T.

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and another,

vs.

NEW YORK CITY RAILWAY COMPANY.

Decision On Application to Make Receivers Permanent.

LACOMBE, C. J.

On September 24th, 1907, a decree was entered on bill and answer appointing temporary receivers of the property of defendant and October 7th was assigned as the date on which hearing should be had on the question whether the receivers should be continued with the usual powers exercised in such cases for operating and preserving the property, ascertaining the liabilities, marshaling the assets and distributing the proceeds. It was announced that at such hearing not only the parties but also any person in anywise interested should be heard.

Upon the hearing the Court listened to argument from Mr. Byrne counsel for complainants and Mr. Kirlin for the Metropolitan Street Railway Company, from Mr. Foster counsel for creditors in tort actions against the New York City Railway Company and against the Metropolitan one of the former having obtained judgment before appointment of receivers, and from Mr. Hawes representing tort creditors of the New York City Railway Company. The

last two gentlemen appeared with petitions, the acceptance or consideration of which the Court reserved till October 14th.

The suit at bar was brought by two general creditors of the New York City Railway Company to recover several thousand dollars for materials, and for work, labor and services. Both complainants are residents of New Jersey and defendant is a resident of New York. The bill, in the form usual in these cases, sets forth their claims and asserts that the defendant is insolvent and unable to pay its present obligations and is overwhelmed with heavy liabilities soon falling due, while its property consists of a leasehold of a system of street-railroads composed of many component roads to whom or to whose bond-holders payments are coming due, default in the payment of which may interfere with the operation of the system. Answer was put in promptly after the filing of the bill, admitting all its allegations and uniting in the application for appointment of receivers. Upon the facts thus presented to the Court the complainants were entitled, under a multitude of precedents too well-known to cite, to the appointment of receivers to marshal the property, ascertain the liabilities and distribute what assets there might be among all entitled to them according to the rules and principles of equity. The complainants, it is true, did not have judgments for their respective claims with execution returned unsatisfied, but since Hollins v. Brierfield Coal Co. 150 U. S. it has always been understood by federal judges that in the opinion of the Supreme Court such prerequisites were solely for the benefit of the defendant, and when waived by him became non-essential. It is now suggested that there was "collusion" in the proceedings resulting in decree appointing temporary receivers, and reference is made to Section 5 of the Judiciary Act of 1875 which provides that if it shall appear to the satisfaction of the Circuit Court that a suit "does not really and substantially involve a dispute or controversy properly

within the jurisdiction of said circuit court, or that the parties to said suit have been improperly or collusively made or joined either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this act, the said circuit court shall proceed no further therein, but shall dismiss the suit, etc."

A controversy is certainly set forth in the complaint and it seems to be an entirely novel proposition that it ceases to exist as a justifiable controversy as soon as defendant admits the allegations of the complaint. If that were so courts would be powerless to enter judgments for undisputed claims since they sit only to dispose of controversies. This court disposed of that question in Park v. N. Y. L. E. & W. R. R. 70 F. R. 641. There is no collusion apparent in any legal sense. It is of course manifest that complainants and defendant were entirely in accord and arranged together that the suit should be brought to the federal court and that the averments of the bill should be admitted by the answer. But there was no colorable assignment of some claim to a citizen of another state, nor any misrepresentation or distortion of facts to mislead the court. On the contrary examination of the books shows that the financial situation is precisely such as was averred in the complaint.

We have then a controversy between citizens of different states and of the statutory amount presented to a federal court of competent jurisdiction. Parties to such a controversy would seem to be entitled as of right to have such court take jurisdiction of it. It surely cannot be that the court can escape the burden of disposing of the questions it may present, however numerous or difficult they may be, merely by finding that both parties elected to seek that tribunal, and then calling such joint election "collusion" under the act of 1875. Expression of judicial opinion in harmony with these statements will be found in Brassy v. N. Y. & N. E. R. R. 19 F. R. 663; Dickerman v. Northern

Trust Co. 176 U. S. 191; and Blair v. City of Chicago, 201 U. S. 400.

It was suggested by counsel that these are state corporations, that their properties are located in the State to be operated under state laws, that the mortgages on them were made in the state, that the state has statutes and courts and machinery for conducting any receivership which may be required, that the administrative detail of conducting such a receivership will be enormous and proper attention to it most irksome and laborious; that in the state the work of supervision can be divided among seventeen judges while here there is but one to attend to it. All these may be very good reasons why the parties might have taken their controversy and all that its determination entails into the state courts; but they will not justify any court in barring its doors to a litigant who comes with a controversy which the Constitution and the laws give him the right to bring before that court.

As to the Metropolitan Street Railway Company, the reasons for allowing it to intervene as a party defendant and for extending receivership over its property were sufficiently set forth in the memorandum filed on October 1st. Having taken its entire property into possession of the court under conditions which left it powerless to recover the same for a year, the receivership left it wholly without means to meet its obligations and it seems to be clearly the duty of the court which has thus deprived it of its resources to protect it against execution while receivers handle and distribute those resources. Having possession of the *res* the court acquires jurisdiction of its owner.

A decree will therefore be entered in the usual form directing the receivers to ascertain the indebtedness and marshal the assets prosecuting vigorously any collectible claims and to apply for further instructions from time to time; meanwhile they will retain possession of the property and will operate the same.

The controlling element in the operation of the property by the receivers will be the circumstance that such

property is devoted to the public service. The traveling public are to be first considered; the service already performed by the roads must be kept up, and improved upon so far as may be. In the matter of improvements the receivers are fortunately relieved—at least in part—from the burden of devising improvements in the system, by the existence of the Public Service Commission. That body is making a careful and exhaustive investigation into all such questions and may prescribe various changes in construction, equipment or operation devised and adapted to secure better service. These directions of the Public Service Commission will be carried out by the receivers so far as the income from operating the roads will permit: whether they should also undertake to borrow money in order to complete such changes is a question which can be determined subsequently when it is known just what those changes are.

The receipts from car service will be devoted first to maintenance including all necessary repairs and replacements so as to avoid break-down at any point, and to operation, including not only employees, materials and supplies but also the adjustment of all claims arising by reason of such operation, and the obligations due to the state or municipality for percentage of gross receipts, taxes, etc., and the necessary expenses of the receivership. Next in order are certain fixed charges in the nature of rentals agreed to be paid for the use of the roads comprising the system and interest falling due on various mortgage bonds of such roads which by the terms of the leases the New York City Railway Company has covenanted to pay. Failure to pay one of these items in the case of any component road will be a default of which the owners of that road can avail, if they choose to do so. And in that case they would be entitled to take such road out of the hands of the receivers, either for operation by themselves or for lease elsewhere. It would seem to be to the public interest, because of facility of transfer, that the roads which

were being run by the City Railway when receivers were appointed should be operated as a unitary system; certainly the question is too important a one to be decided until investigation and experience shall have produced such reports from receivers as will give an accurate and complete view of the situation. For the present therefore the receivers will continue to pay such rentals and mortgage interest. This will not include the rental to the Third Avenue Railroad which will fall due the last of this month. A clause in the lease by that road provides that default in the payment of any instalment of that rental cannot be availed of for six months. Long before that time sufficient information can be gathered (and made public) by the receivers to give such enlightenment as to the whole situation as will enable the court to deal understandingly with all questions as to payment of all these items of rent and mortgage interest. Before default is made in any case (except the one above referred to and the rental due October 15th to the Metropolitan Street Railway), petition will be filed setting forth all the facts bearing on the question and asking instructions and a day will be fixed on which not only the parties to the suit, but all in any way interested (including the Public Service Commission as representative of the traveling public) will be heard as to the most equitable and wisest course to pursue. Until further order the receivers will also, if the other parties to such arrangements consent, carry out the arrangements by which the New York City Railway Company operates certain railroads not under lease, such as the Dry Dock, East Broadway and Battery R. R. and the Union Railway.

The receivers will forthwith employ an accountant of the highest standing to make an investigation of the books and papers, and also an expert engineer of like standing not heretofore connected with these roads to make a thorough examination of their physical condition, so that receivers may be able to prepare an exhaustive report as to the liabilities and assets, condition of the property and cost of operation. This report

will be prepared as soon as may be, consistently with a most thorough investigation. The sooner a comprehensive and accurate report as to the entire situation is made public on the records of this Court, the sooner we shall be in a position to determine how best to dispose of the property and relieve the receivers and the Court from the grievous burden of its conservation and operation.

As to some minor matters discussed on this hearing. Criticism has been made as to the phraseology of the decree appointing temporary receivers, which was modelled upon similar decrees in other receiverships in this Court. The Court had noted these in advance of this argument, and the decree making receivers permanent will require the approval of the Court before payment of any rentals or the borrowing of any money. The criticism as to payment of salaries seems not well founded, a fair interpretation of the decree restricts it to salaries of those whom the receivers employ to do work for them, but a change of phraseology in the final decree will make that plain. It is suggested that there should be a provision for preference of damage claims for accidents resulting from operation of the road, or at least for putting them on the same footing as operating expenses. It is premature to decide that now. When the claims are in, a time will be fixed when due notice can be given to every one and the question discussed and decided.

Upon the argument Mr. Hawes requested the court to make an announcement as to claims for damages for personal injuries sustained in the operation of the road. The request is a proper one and will be complied with. All pending suits against the New York City Railway Company or the Metropolitan Street Railway Company which were begun before receivers were appointed may be prosecuted to judgment, thus liquidating the claim. These claims are against the property of one or other of the corporations now held by receivers and will rank with all other claims of general creditors of such corporation unless upon the

argument heretofore referred to they may be accorded some general or qualified preference. It will be advisable for all such claimants, whose suits are not yet tried to file a claim with the receivers stating that it is in litigation and when there has been a liquidation of the amount by verdict and judgment or by compromise approved by this court, they can file an amended claim. The master to whom all claims will be referred, will accept this liquidation unless some extremely exceptional circumstances call for some revision.

As to claims for damages resulting from some accident before receivers were appointed, but not yet in suit. These are claims against the property of the defendant which may be filed with the receivers and may go to the master for adjustment. In any case, however, if plaintiff wishes a jury trial the decree in no way prevents his bringing suit against the company and liquidating the amount by judgment as if the suit had been begun before receivership. When liquidated it will rank with claims already in suit.

For damages resulting from the operation of the road by the receivers, the injured party may, of course, sue the receivers in any court he pleases, without asking leave from any one.

Oct. 8, 1907.

(ENDORSED:) Circuit Court of the United States, for the Southern District of New York.—The Pennsylvania Steel Company and another vs. New York City Railway Company. Opinion, LACOMBE, C. J.—U. S. Circuit Court, Southern District of New York, Filed Oct. 8, 1907. John A. Shields, Clerk.

Exhibit U.

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and another

vs.

THE NEW YORK CITY RAILWAY COMPANY.

Decision on Application of Metropolitan Street Railway Company to Be Made a Party Defendant.

LACOMBE, C. J.

The Receivers are now in possession of the earning property of petitioner, and under the terms of the lease petitioner can avail of no default in payment of amounts stipulated within a year from such default. The property is an intricate combination of various roads, one or more of which might be cut out of the system by failure to pay the interest on some underlying mortgage, or some rental due the constituent road. It is of vital interest to petitioner that the property be kept intact. Under these circumstances there can be no doubt that a proper case for intervention is made out. The only question is whether petitioner should be brought in as a party plaintiff or a party defendant. The petition shows that by reason of the fact that all its earning property is held by receivers, who, it is apprehended, will not pay certain sums, which the lessee stipulated to pay to the lessor, the latter is without means to meet its obligations, being deprived of its income and unable, while its property is held

by receivers for an indefinite period, to borrow on such property. Whatever may be the actual value of the property of petitioner it appears to be in a condition of temporary insolvency and should come in as a party defendant turning all its property over to receivers to be marshalled and its obligations paid. Central Trust Co. v. Wabash R. W., 29 F. R., 618.

Such a disposition of the matter seems to be greatly to the public interest. It is hardly to be supposed that any substantial sum could be borrowed on receivers' certificates bottomed only on a lessee's interest in a leasehold, which might be terminated in a year for failure to pay all that was stipulated. On the other hand when receivers are in control of all the interests of both lessor and lessee it may reasonably be expected (unless indeed the very growth of the system has reduced its value to a greater extent than is generally supposed) that they will be able, should occasion arise, to obtain the money necessary to pay for such replacements and improvements as may be required to secure efficient service.

The interests of lessor and lessee are different and in a sense diverse. Nevertheless it seems practical to adjust all questions in a single receivership. In this circuit it is not the practice for receivers to concern themselves with plans for re-organization. Fowler v. Jarvis Conklin, 63 F. R., 888. Their sole functions are to hold the property intact operating it as efficiently for the public service as their resources will permit to ascertain the liabilities; to marshal the assets and eventually, unless in the meantime some entirely solvent concern able to liquidate all obligations and succeeding to owner's and lessee's interests shall appear to take it off their hands, to sell it to the best advantage and apply the proceeds ratably to the payment of the liabilities. It is thought that the present receivers can do this as holders of the interests of both lessor and lessee. Should future experience seem to indicate that a separate trustee for one of the

parties is required, some way to meet that difficulty will be found.

With assent of the sureties proper extension of the receivers' bonds should be had so as to cover the new situation.

Oct. 1, 1907.

E. HENRY LACOMBE,
U. S. C. J.

Filed. Oct. 1, 1907.

Exhibit V.

Decision on Petition of Joseph Konrad and Others for Leave to Intervene.

U. S. CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

PENNSYLVANIA STEEL COMPANY and another

vs.

NEW YORK CITY RAILWAY COMPANY and another.

Petition of KONRAD and GALLAGHER and another.

LACOMBE, Circuit Judge.

Examination of the numerous authorities cited indicates that the propositions presented upon these applications are substantially those already discussed in the memoranda heretofore filed in this cause. The petitions and affidavits may be filed and the prayers for leave to intervene and for further relief are denied. Order to be settled on notice, and notice may be given for Friday afternoon.

October 28th, 1907.

Filed 28th October, 1907.

Exhibit W.

Petition of Receivers for Authority to Make Expenditures for Improvements, Betterments, Etc.

UNITED STATES CIRCUIT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY,
Complainants,

AGAINST

NEW YORK CITY RAILWAY COMPANY,
Defendant.

TO THE HONORABLE THE JUDGES OF THE SAID COURT:

The petition of Adrian H. Joline and Douglas Robinson, Receivers duly appointed herein in the first instance by order made and filed on the 24th day of September, 1907, and continued as Permanent Receivers by order made and filed on the 9th day of October, 1907, respectfully shows to the Court as follows:

FIRST. In April of this year, as your petitioners are informed, the operating equipment of the defendant corporation was seriously impaired through the destruction by fire of its car house at 146th Street and Lenox Avenue, by which over 300 cars were lost, including a number of snow-sweepers. On the 9th instant a fire occurred in the car house of the Dry

Dock, East Broadway and Battery Railroad Company, in which there were destroyed about 80 cars belonging to the defendant corporation or its leased lines. In order to afford the same service to the public as heretofore it is absolutely necessary, as your petitioners are informed and believe, that new equipment in place of that so destroyed should be procured forthwith. Thus far no special inconvenience has been occasioned to the travelling public for the reason that most of the cars destroyed were closed or box cars, and during the summer time when open cars are largely in use their loss did not affect the operation of the road. As it is customary, however, to withdraw the open cars from service about November 1st, it is imperative as cold weather approaches that the new closed cars be made ready for service at the earliest day practicable. A number of such cars were ordered by the defendant Company some time before the receivership, but only about 30 had been delivered up to the date when your petitioners were appointed.

Your petitioners are now advised that they can obtain immediately from the J. G. Brill Company 9 closed cars of ordinary type, which are ready for delivery, and by placing an order at once, they can also obtain 80 cars to take the place of those destroyed in the recent fire, and that the same will be ready for service on or before January 15th, proximo. It is also possible to obtain 155 cars of special type and of large capacity, to be delivered from time to time before the close of the year. In connection with said 155 cars it will be necessary to purchase various electrical apparatus and equipment which, as your petitioners are advised, can be procured from the General Electric Company, if ordered forthwith, in time for installation of the car bodies delivered. The cost of said 9 cars will approximate about $20,000., and said 80 cars can probably be purchased for about $236,000. complete. The cost of said 155 cars of special type will be approximately, $540,000., and of the necessary electrical equipment, including the air brakes, about

$430,000. Incidental to their installation will be additional expenses for registers, heaters, fenders, handbrakes, wheels, etc., aggregating about $88,000.

To replace the snow-sweepers destroyed in the fire of April last, your petitioners find that they can procure 22 new sweepers at an approximate cost of $37,000. In addition thereto it is desirable that there should be purchased at least 10 scraping cars, so called, at approximately $11,000, to be used for the purpose of removing snow and ice from the conduits of the electric system of the defendant Company. Such cars have been found to work satisfactorily and are essential to the successful operation of the system during the winter months. Under severe weather conditions, it is impossible to operate the road satisfactorily without them, and, as your petitioners are advised, the experience of the last winter has shown that the supply now on hand is insufficient. The prices of the cars and equipment above described are, according to the best knowledge and information of your petitioners, fair and reasonable, and it is the judgment of your petitioners that the necessities of the system imperatively require that they should be authorized at once to make contracts for the purchase thereof.

SECOND. Your petitioner further shows that, in order to properly care for the new cars above described, it is, in their judgment, essential that they should be authorized to replace the car house at 146th Street and Lenox Avenue. At this point the principal repair and overhauling shops of defendant Company were located, and its operations have been seriously crippled since the fire of last April because of the lack of adequate facilities for maintaining the equipment. This is particularly true of the trucks of the cars, the inspection and repair of which was carried on at 146th Street. Because of inability to do this work satisfactorily or even to make thorough inspection the defendant Company, as your petitioners are advised, was obliged to keep cars in service which were in a defective condi-

tion, causing considerable complaint from the public on the ground of noise incident to their operation. As a result of the burning of the car houses at 146th Street and at 86th Street it has been necessary for some time, through lack of proper storage facilities, to leave a large number of cars on the streets over night. This renders it difficult to conduct a proper inspection, requires additional men to watch the cars and renders them liable to deterioration from exposure to the weather. It is, therefore, imperative, in the judgment of your petitioners, that the 146th Street car house should be rebuilt as soon as possible. The expense of this, as your petitioners are advised, will be approximately the sum of $665,000.

THIRD. In November, 1906, as your petitioners are advised, the defendant Company announced to its employees its intention of equipping all cars of its system of vestibules for the better protection of motormen from severe weather. About 700 of the closed cars, or approximately one-third of the total number in use, have been equipped with this protecting device. To equip the remainder will require an expenditure of about $70,000, including therein not only such part as is done by outside contract but the labor and material supplied in the Company's shops. In the judgment of your petitioners, it is desirable, not only in view of the announcement heretofore made to the employees but from the standpoint of the public, that they should be authorized to incur the expense necessary to complete the equipment of all the closed cars with such vestibule.

FOURTH. Your petitioners upon their appointment found in progress the installation of a conduit electric system on First Avenue, from 59th Street to 125th Street, the completion of which will involve an expenditure of approximately $275,000. Of this amount over $100,000. will be required to defray the expense

of paving the street. This repaving work must necessarily be performed in order to restore the street to its original condition, irrespective of whether or not the track construction is completed. The question is thus presented as to whether approximately $175,000. should be expended in order to be able to operate electric cars on First Avenue between the streets above stated. If not operated electrically, the road at this point must be operated by horse power, which would require the expenditure of at least $50,000. in order to procure a sufficient number of horses for the purpose, in addition to providing proper stable facilities. As your petitioners are advised, the cost of operating horse car lines is much greater than that of electrical operation, and the better transportation facilities afforded by electrical power would, according to past experience, tend to largely increase the receipts per car mile. In the judgment of your petitioners, it is desirable that they should be authorized to make contracts for completing the installation of the section between 59th and 125th Streets on First Avenue without delay.

FIFTH. Your petitioners further show that, as they are informed and believe, the experience of the defendant during the last two winters shows that there has been considerable difficulty in supplying sufficient power to operate all of its cars, particularly when the condition of the streets was such as to require more than ordinary power, and it was at the same time necessary to supply additional current for the purpose of heating the cars. Upon a number of cars it was found necessary to turn off the heat, thereby occasioning much discomfort to passengers and giving rise to widespread criticism. In order to guard against accident, disabling a sub-station or part of its equipment, it is essential that new sub-station equipment should be installed so as to insure the sufficiency of the power at all points. The estimated cost of such equipment is

$100,000, and, in the judgment of your petitioners, it is desirable that they should be authorized to contract therefor.

SIXTH. Your petitioners further show that, as they are informed, the City of New York is now engaged in constructing an underground terminus at the westerly end of the Williamsburg Bridge for the purpose of furnishing terminus facilities for the operation of the Brooklyn elevated and surface cars. This work will involve a change in the grade of the street at that point and a consequent necessity for changing the grade of the tracks of the defendant Company for a considerable distance on Delancy and Clinton Streets. Your petitioners have been notified by the Department of Bridges of the City of New York that such department be definitely assured forthwith as to whether or not the work of changing the grade of the tracks will be promptly undertaken by your petitioners, as Receivers, and that failing to receive such assurance, said Department will undertako the work of changing the grade of said tracks, charging the expenses of the same to the defendant Company. Your petitioners are advised that if the work of changing the grade of the tracks is undertaken by the engineering force under their charge as Receivers, the cost will not exceed $70,000, owing to the facilities at the disposal of the defendant Company for performing work of this character, whereas, if the said work is done by the City, the expense will be considerably greater and the running of cars more seriously interfered with. In the judgment of your petitioners it is desirable that they should be authorized to carry out this work and so advise the City officials at the earliest possible date.

SEVENTH. Your petitioners further show that, in order that the various car barns under their charge should have proper protection against fire, it is essential that automatic sprinkler equipment should be installed with as little delay as possible. The risk of

fire in these structures is peculiarly great owing to the nature of the equipment stored therein, and it is impossible to obtain insurance on the buildings and contents to an amount which will even approximately reimburse the owners in the event of loss. At present your petitioners are unable to procure insurance for more than 75 per cent. of the amount which should be carried. As your petititioners are advised, it will not be possible to retain even this amount unless sprinkler equipments are installed and, as matter of fact, cancellations of outstanding policies are being received almost daily. In addition to this there should also be performed other work necessarily appurtenant thereto, such as the fireproofing of floors, the installation of fire gongs and other apparatus for the purpose of protection, which are insisted upon hy the insurance companies, Your petitioners desire to make contracts forthwith for sprinkler equipment for the various car houses, the approximate cost of which will be respectively as follows:

96th and 97th Streets, 2nd and 1st Avenues	$133,737.00
129th Street and 3rd Avenue	72,267.00
129th Street and Amsterdam Avenue	40,963.00
99th Street and Lexington Avenue	103,630.00
65th Street and 3rd Avenue	79,750.00
218th Street and 9th Avenue	41,158.00
42nd Street and 13th Avenue	21,228.00
	$492,733.00

In addition to the above and incidental thereto there will be expense for sundry items, including fire-extinguishers, re-arrangement of lighting circuits, additional lighting circuits and automatic circuit breakers for car house tracks, handling and storage of oil in six buildings, auxiliary fire alarm system, supervision of sprinkler installation and of fire protection apparatus and miscellaneous expenses, amounting in the aggregate to approximately $128,000.

WHEREFORE, your petitioners respectfully ask the authority of the Court to make the expenditures above described or its instructions in the premises.

All of which is respectfully submitted.

Dated October 19th, 1907.

(signed) . ADRIAN H. JOLINE,
DOUGLAS ROBINSON,
Receivers.

MASTEN & NICHOLS,
Counsel.

UNITED STATES OF AMERICA, }
Southern District of New York, } ss.:

ADRIAN H. JOLINE, one of the Receivers of the New York City Railway Company, being duly sworn, deposes and says:

That he is one of the petitioners above named and that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

ADRIAN H. JOLINE.

Sworn to before me this 19th day of October, 1907.

JOHN A. DUNN,
[SEAL.] Notary Public,
N. Y. Co.

Filed 19th Oct., 1907.

Exhibit X.

Order Granting Petition of Receivers for Authority to Make Expenditures for Betterments.

CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and THE DEGNON CONTRACTING COMPANY,

Plaintiffs,

AGAINST

NEW YORK CITY RAILWAY COMPANY,

Defendant.

Now on the 19th day of October, 1907, come Adrian H. Joline and Douglas Robinson, the Receivers duly appointed herein by order made and filed on the 24th day of September, 1907, and continued as permanent Receivers by order made and filed on the 9th day of October, 1907, and present their petition asking the authority of this Court to make certain expenditures for betterments, replacement and equipment, and requesting the instructions of the Court in that regard.

Whereupon the Court having duly considered the said petition and being fully advised in the premises and it appearing to the satisfaction of the Court that

the expenditures so recommended by the Receivers are necessary to make the roads under their charge efficient, to place their equipment in proper condition, to adequately protect the same and to perfect the service of said roads, now, on motion of Masten & Nichols, solicitors for the said Receivers, it is

ORDERED, that the said Receivers, Adrian H. Joline and Douglas Robinson, be and they are hereby authorized and empowered to make the said expenditures set forth in said petition, and to that end said Receivers are hereby authorized to enter into such contracts and agreements as may be necessary therefor or incidental thereto, such expenditures being summarized as follows and the amounts stated being approximate:

Nine (9) closed cars (now ready for delivery)	$ 20,000
Eighty (80) closed cars (not yet ready for shipment)	236,000
One hundred and fifty-five (155) cars of a special type	540,000
Electrical equipment for same	430,000
The equipment for the said cars including registers, etc.	88,000
Twenty-two (22) snow-sweepers	37,000
Ten (10) scraping cars	11,000
Rebuilding of 146th Street and Lenox Avenue car house	665,000
Vestibule equipment for about fourteen hundred (1400) closed cars	70,000
Installation of conduit electric system from 59th Street to 125th Street on First Avenue	275,000
New Sub-Station equipment	100,000
Change of Grade of tracks on Delancy and Clinton Streets	70,000

Automatic Sprinkler Equipment for Car Houses, as follows :

96th Street and 97th Street, Second and First Avenues	$133,737	
129th Street and Third Avenue	72,267	
129th Street and Amsterdam Avenue	40,963	
99th Street and Lexington Avenue	103,630	
65th Street and Third Avenue	79,750	
218th Street and Ninth Avenue	41,158	
42nd Street and Thirteenth Avenue	21,228	
		492,733
Sundry Items, including Fire-Extinguishers, re-arrangement of lighting circuits, etc.		128,000

Dated New York, October 29th, 1907.
Filed 29th October, 1907.

SUPREME COURT OF THE
UNITED STATES.

October Term, 1907.

In the Matter of

the

Application of FRANCIS S. REISENBERG and DANIEL GALLAGHER, for a writ of Mandamus or of Prohibition to be directed to HON. E. HENRY LACOMBE, Circuit Judge and the Circuit Court of the United States for the Southern District of New York.

Original No. 11

BRIEF FOR RESPONDENTS.

STATEMENT OF THE CASE.

The application, in No. 11, is for a writ of mandamus or prohibition, to be addressed to the respondents, the senior Circuit Judge, and the Circuit Court of the United States for the Southern District of New York, in a proceeding entitled *In the Matter of the Petition of the Metropolitan Street Railway Company* in which that company asked leave to invervene as a party de-

fendant, for the protection of its interests, in the case of the *Pennsylvania Steel Company and the Degnon Contracting Company against The New York City Railway Company,* and to have the receivership in the original suit extended over the property of the petitioner.

The course of the proceedings prior to the filing of the application of Reisenberg and Gallagher for the writs was as follows:

On September 24, 1907, The Pennsylvania Steel Company and the Degnon Contracting Company filed a creditors' bill in equity against the New York City Railway Company, in the Circuit Court of the United States for the Southern District of New York, on claims aggregating $48,004.65 for materials furnished and work performed at the request of the defendant. The bill averred that the defendant was in possession of and was operating practically the entire system of street railways in the City of New York, including a large number of lines leased by it from the Metropolitan Street Railway Company; that the defendant had a large floating indebtedness, then overdue, for materials, supplies and taxes, which by reason of its insolvency it was unable to pay; that creditors might bring suits on their claims and levy executions on the lines of railroad owned by the defendant, or mortgages might be fore-

closed, with the result that the system of railways that it was operating might become disintegrated and seriously impaired in value; and after setting forth the existence of the usual grounds for the administration of the assets of insolvent railway corporations by courts of equity, prayed that the rights of the complainants and all other creditors of the defendant should be ascertained, that the assets of the defendant should be marshalled and administered, that the lines and priorities thereon should be ascertained, and that a receiver should be appointed. *Return*, pp. 1-16.

After a subpœna had been duly served, pp. 16, 17, the defendant appeared and filed an answer admitting the allegation and joining in the prayer of the bill. Pp. 18, 19. Accordingly, on Sept. 24, 1907, the Court entered an order granting the prayer of the bill, and appointing Adrian H. Joline and Douglas Robinson temporary receivers of all the street railways owned or leased or operated by the defendant, and of its other property; and directing that cause be shown on October 7, 1907, why the receivership should not be continued during the pendency of the action. Pp. 21, 24.

The receivers duly qualified and took possession of the property. *Return*, p. II.

On October 1st, 1907, the Metropolitan Street Railway, which had leased to the New York City

Railway nearly all the lines of railroad that had been taken possession of by the receivers under the order of September 24, 1907, presented a petition for leave to intervene in the original action as a party defendant and to have the receivership extended over its interests in the property. P. 25.

The petition averred that the Metropolitan Street Railway Company is a consolidated corporation, which owns five lines of street railway, and is lessee of thirteen other lines of street railway in the City of New York; that under the indentures by which it leased the thirteen lines mentioned there are reserved to the lessors rights of re-entry in case of default in the payment of rent; that by an indenture of lease dated March 21, 1902, between the Metropolitan Street Railway Company and the defendant New York City Railway Company, which then bore the name of Interurban Street Railway Company, the Metropolitan Company leased to the New York City Railway Company for a long term its entire system of street railways, including the lines owned by the petitioner and the lines leased by it, on the agreement of the lessee to pay, by way of rental, all taxes and assessments on the demised properties, all rentals payable under the leases of the lines leased to the petitioner, interest on the funded debt of the petitioner, other fixed charges of the petitioner, and an amount equal to 7 per

cent. per annum on the capital stock of the Metropolitan Street Railway; that among other things the lease to the New York City Railway Company provides that in case the lessee shall fail at any time to pay the rent or to keep any of the covenants in the lease, and such default shall continue for twelve months after written demand and notice from the petitioner to the lessee, the lease shall cease and determine, and the lessor shall become entitled to re-enter; that all the lines of railway embraced in the lease are subject to funded indebtedness secured by mortgage, and that failure to meet the interest on the funded indebtedness as it matures will operate as a default, and render such mortgage enforceable; that the mortgage indebtedness referred to aggregates, on all the lines, more than $100,000,000; that by the refunding mortgage of the petitioner which is expressed to be subject to the aforesaid lease made by the petitioner to the defendant, the petitioner covenanted punctually to observe and perform all the obligations and pay and discharge all the amounts payable under any lease thereby mortgaged, so that the interest of the petitioner in any such leasehold estate might be at all times preserved unimpaired as security for the bonds issued under the refunding mortgage; that the refunding mortgage provides that in case default shall be made in the payment of interest on any

bonds secured by it, or of the principal of any such bond, or in the performance of any of the covenants or conditions in the refunding mortgage that the petitioner is bound to perform, and any such default shall continue for a period of 60 days after written notice thereof, the trustee shall be entitled to enforce its rights, and the rights of the bondholders, or institute a proceeding for the foreclosure of the refunding mortgage, or to take any other appropriate legal or equitable remedy to protect its rights under the mortgage; that the New York City Railway since entering into possession of the property leased by it from the petitioner has operated all the lines owned and leased by it, as a single system, constituting routes over different lines, connecting separate lines over parts of intermediate leased or controlled lines, interchanging equipment on the various lines, and furnishing equipment to meet the varying requirements of particular lines, supplying power and using power houses, car barns and stations, so as to procure the most effective and economical operation of the system as a whole, and establishing a system of transfers between various lines and routes; that the equipment owned by the lessee has been used over the system as the requirements of operation made necessary, without assignment to any particular line or lines; that many of the lines leased by the petitioner to the

defendant are without adequate equipment of their own, and that in many cases the motive power employed by leased or controlled lines has been changed to electricity, without supplying them with independent power houses, or other independent sources of supply of power, leaving such lines dependent for power on the other lines of the system; that it appears from the bill of complaint and the answer in the original suit that the New York City Railway Company is insolvent; that the fixed charges of the petitioner's system are accruing, and instalments will fall due October 1st, 1907, and each month thereafter; that failure to meet such fixed charges will operate as a default under the mortgage securing the indebtedness, the interest on which shall so become in default, and will render such mortgage enforceable; that rentals under the leases made to the petitioner are accruing, and that instalments under some or all of the leases will shortly fall due; that under the lease made to the defendant by the petitioner no right of re-entry, by reason of default in the payment of the rent due from the New York City Railway Company to the Metropolitan Street Railway Company, or in the performance of any of the agreements or covenants therein contained, will accrue thereunder to the petitioner, until the expiration of a year after default, and notice, and that, in the mean-

time the petitioner's system of railway lines may be hopelessly disrupted and the petitioner suffer irremediable loss; that the railway system of the petitioner embraced in the lease to the New York City Railway Company is very extensive; that it is of vital importance to the petitioner and its creditors that such railway system may be continued to be operated as a whole and be preserved; that under the terms of the lease to the defendant the defendant is bound to finance the requirements of the petitioner for capital expenditures; that the petitioner has already issued to the defendant its obligations in large amounts on account of advances by defendant for that purpose; that the defendant has disposed of such obligations, and that they are now outstanding in the hands of other holders; that claims for personal injuries to a large amount in connection with the operation of the petitioner's railway system prior to the lease are outstanding, and the subject of actions pending; that by the lease to the defendant, the defendant has agreed to pay any judgments recovered in respect of such claims; that, under the terms of the lease made by the petitioner to the defendant, the petitioner has parted with the possession of its entire street railway system, and has no other resources wherewith to meet the fixed charges on the mortgage indebtedness of its system, so leased, or to meet the accruing rentals

of the lines so leased to the petitioner, or its predecessors, and by the petitioner so leased to the defendant, or to meet judgments for claims for personal injuries, or to meet its outstanding obligations for capital expenditures as they mature, or to meet any other indebtedness or liabilities than the rentals reserved under the said lease made by the petitioner to the defendant, as a part of which the defendant agreed to pay such charges and rentals and perform the other covenants therein contained; that said system of railways is in the possession of the court, through its said receivers, appointed in this case for administration in accordance with equitable principles; that no substantial remedial action can be taken in this cause at the instance of the defendant, or of the defendant's creditors, which will not affect the rights of the petitioner; and that the rights of the petitioner are inextricably interwoven with the rights which this court has undertaken to administer in the cause. The petition concludes with a prayer that the petitioner may become a party defendant to the suit for the protection of its interests and those of its creditors; that the receivership under the original bill be extended so as expressly to embrace the interests of the petitioner in said property, the petitioner submitting itself and its property unreservedly to the jurisdiction of the court; and that the receivers be directed

to keep separate accounts of the lines owned by the defendant, and also of such of the leased lines embraced in the petitioner's system, and in the petitioner's lease, as might be practicable, and that the rents, issues and profits and income be applied under the orders and the decrees of the court to the end that said system of the petitioner might be protected and preserved. Pp. 25-33.

The petitioner annexed to its petition a copy of the lease, dated March 21, 1902, from the Metropolitan Street Railway Company to the New York City Railway Company, referred to in the petition, as Schedule A, *Return*, pp. 35-93, and a copy of the refunding mortgage to the Morton Trust Company, as Trustee, dated March 21, 1902, referred to in the petition as Schedule B. *Return*, pp. 94-211.

After hearing counsel of all parties on the prayer of the petition, the Court, on October 1, 1907, granted the application, entered an order admitting the Metropolitan Street Railway Company as a party defendant in the original suit, and extending the receivership, temporarily, over its property, leaving the question of continuing the receivership to be argued on October 7, 1907, at the hearing on the question of continuing the receivership in the original proceeding. Pp. 213, 214. Reasons for granting the application were

stated in an opinion filed by the Court on the same day. P. 438. In the course of the opinion, Lacombe, *J.*, said:

"The Receivers are now in possession of the earning property of petitioner, and under the terms of the lease petitioner can avail of no default in payment of amounts stipulated within a year from such default. The property is an intricate combination of various roads, one or more of which might be cut out of the system by failure to pay the interest on some underlying mortgage, or some rental due the constituent road. It is of vital interest to petitioner that the property be kept intact. Under these circumstances there can be no doubt that a proper case for intervention is made out. The only question is whether petitioner should be brought in as a party plaintiff or a party defendant. The petition shows that by reason of the fact that all its earning property is held by receivers, who, it is apprehended, will not pay certain sums, which the lessee stipulated to pay to the lessor, the latter is without means to meet its obligations, being deprived of its income and unable, while its property is held by receivers for an indefinite period, to borrow on such property. Whatever may be the actual value of the property of petitioner it appears to be in a condition of temporary insolvency and should come in as a party defendant turning all its property over to receivers to be marshalled and its obligations paid. *Central Trust Co.* v. *Wabash R. W.*, 29 F. R., 618."

On October 7, 1907, the Court heard argument from counsel for the parties to the suit, and from Mr. Roger Foster, and Mr. Gilbert R. Hawes, rep-

resenting tort claimants, as *amici curiae*, on the question of continuing the receivership.

An opinion holding that the receivership should be continued over the property of both defendants was filed October 8, 1907. Pp. 430-431. An order to that effect was made and filed October 9, 1907, Pp. 283, 287.

In the opinion holding that the receivership should be continued as to both companies, Judge Lacombe, speaking of the situation of the Metropolitan Company, at p. 433, said:

"As to the Metropolitan Street Railway Company, the reasons for allowing it to intervene as a party defendant and for extending the receivership over its property were sufficiently set forth in the memorandum filed on October 1st. Having taken its entire property into possession of the Court, under conditions which left it powerless to recover the same for a year, the receivership left it wholly without means to meet its obligations, and it seems to be clearly the duty of the Court which has thus deprived it of its resources to protect it against execution while receivers handle and distribute those resources. Having possession of the *res* the Court acquires jurisdiction of its owner."

On October 14, 1907, the petition of Joseph Konrad for leave to intervene in the original suit was presented and argued by Mr. Roger Foster, but the papers, including an amendment to the prayer of the petition, were not filed until October

28, 1907. Pp. 294-309. At the same time Mr. Foster argued an oral application for leave to intervene in behalf of Gallagher and Reisenberg on claims against the Metropolitan Company. The papers on the latter petition were also filed on October 28th, 1907. Pp. 310-313. Affidavits in opposition to the application having been presented, pp. 314-322, the Court permitted the petitions for leave to intervene to be filed but denied the applications. *Opinion*, p. 440. Orders to that effect were made and filed November 6, 1907. Pp. 292, 328.

The petition of Gallagher and Reisenberg for leave to intervene on claims against the Metropolitan Company, did not question either the jurisdiction of the Court to entertain the application of that company or the propriety of extending the receivership over its property. It alleged that the original suit against the New York City Company was collusive, and had been promoted for assumed reasons of which the petitioners did not approve, but the Metropolitan Company was not implicated in any manner with the alleged wrongdoing. Pp. 310-312. The petition referred to and incorporated, p. 312, the petition in the Konrad case; but there is nothing in that petition, p. 294, which helped in any manner the applications of Gallagher and Reisenberg, or denied the jurisdiction of the Court to make an order extending the receivership

over the Metropolitan properties. Indeed the Konrad petition seems to proceed on the mistaken theory that the "lessor" of the roads, the Metropolitan Company, "has not applied for a receiver." P. 304.

The proceedings subsequent to the denial of Mr. Foster's petitions by the Circuit judge were: an order filed November 9, 1907, adjudicating the insolvency of the Metropolitan Company, directing that its assets be marshalled for the benefits of its creditors, and appointing a special master to take proof of claims, pp. 324, 325; the filing of a bill by the Morton Trust Company on November 9, 1907, p. 392, for the foreclosure of a mortgage which secured bonds on the lines of the Metropolitan Company to the amount of $16,604.00, pp. 331-422, and the appointment of receivers under that bill on November 19, 1907. Pp. 426-429.

In pursuance of an application for leave to file a petition for a writ of mandamus, presented by the petitioners Reisenberg and Gallagher, this Court, on November 18th, 1907, issued an order requiring the Honorable E. Henry Lacombe, Circuit Judge, and the Circuit Court of the United States for the Southern District of New York, to show cause why the prayer of their petition should not be granted. The prayer was that the respondent should

"show cause why a writ of mandamus should not issue commanding the said Judge and the said Court, and each of them, to dismiss the bill of complaint in said suit, and all proceedings therein, and to vacate said orders appointing said receivers, and to desist from exercising any further jurisdiction in said suit, except the entry of an order dismissing the said suit; or in the alternative such a writ commanding him to allow the intervention of your petitioners in said suit, or in the alternative that a writ of prohibition may issue from this Honorable Court forbidding the said Honorable Circuit Judge of the United States for the Second Circuit, and forbidding the said Circuit Court of the United States for the Southern District of New York from taking any further proceedings in said suit and from taking any further proceedings in connection with said receiverships, and for such other and further relief in the premises as shall seem just and meet."

It appears from this petition that the claim of Gallagher was for personal injuries sustained June 13, 1892, and that an action had been brought on it in the Supreme Court of the State of New York, which is still pending and undetermined. It further appeared that the claim of Reisenberg was for personal injuries alleged to have been received June 27, 1895, and that the action in respect of that claim is still pending in the Supreme Court of the State. Though the claim of Gallagher was more than 15 years old, and that of Reisenberg more than 12 years, neither of the actions has been brought to trial. *Petition*, pp. 3, 4.

The return, filed herein December 2, 1907, by the Circuit Judge, and the Circuit Court, contains a record of all the proceedings in the Circuit Court "relating to any motion, petition or application of Joseph Konrad, Daniel Gallagher and Francis S. Reisenberg, and is confined to the record in accordance with the respondents' construction of the purpose and intention of the order to show cause." *Return*, p. V.

There are certain allegations in the petition of Reisenberg and Gallagher for leave to file the application for the writs, that are not contained in the petition presented to Judge Lacombe, praying for leave to intervene in the proceedings in which receivers were appointed for the Metropolitan Street Railway Company. It will be assumed, however, for the purposes of the argument, that this Court will not consider any matter that was not laid before Judge Lacombe in the petition on which his judicial action was based.

FIRST POINT.

THE GRANTING OF THE ORDER ALLOWING THE METROPOLITAN STREET RAILWAY COMPANY TO INTERVENE IN THE ORIGINAL SUIT, FOR THE PROTECTION OF ITS OWN INTERESTS, AND THOSE OF ITS CREDITORS IN ITS RAILWAY LINES WHICH WERE IN THE CUSTODY OF THE COURT, UNDER THE PRIOR RECEIVERSHIP, WAS A LEGITIMATE EXERCISE OF JUDICIAL DISCRETION.

I. The jurisdiction of the Circuit Court to entertain the application of the Metropolitan Company for leave to intervene seems plain. It rests on two facts: first, that the subject-matter of the controversy was in the actual possession of receivers appointed by the Court, *Freeman* v. *Howe*, 24 How., 450; *Krippendorf* v. *Hyde*, 110 U. S., 276; *Gumbel* v. *Pitkin*, 124 U. S., 131; *Morgan's Company* v. *Texas Central Ry.*, 137 U. S., 171; *In re Tyler*, 149 U. S., 164; *Rouse* v. *Letcher*, 156 U. S., 47; *Carey* v. *Houston & Texas Ry.*, 161 U. S., 115; *White* v. *Ewing*, 159 U. S., 36; *Pope* v. *Louisville, &c., Ry.*, 173 U. S., 573; *Porter* v. *Sabin*, 149 U. S., 473, 479; *Byers* v. *McAuley*, 149 U. S., 608, 618; *Price* v. *Abbott*, 17 Fed. Rep., 506; *Armstrong* v. *Trautman*, 36 Fed. Rep., 275; *Compton* v. *Jesup*, 68 Fed. Rep., 263; 15 C. C. A., 397; *Lanning v. Osborne*, 79 Fed. Rep., 657, 662; *Toledo, &c., R. Co.* v. *Continental Trust Co.*, 95

Fed. Rep., 497, 505; 36 C. C. A., 155; *Davis* v. *Martin,* 113 Fed. Rep., 6, 9; 51 C. C. A., 27; and second, that, as was said by the Court in *Hollins* v. *Brierfield Coal Co.,* 150 U. S., 371, 380, "The administration of the assets of an insolvent corporation is within the functions of a court of equity, and, the parties being before the court, it has power to proceed with such administration." This principle was also recognized in *Quincy* v. *Humphreys,* 145 U. S., 82, 95, where the theory of such a bill was explained. The court there said:

"When the receivers were appointed, the Wabash Company consisted of a system controlling some thirty-six hundred miles of road, made up by the consolidation and leasing of many different railroads, upon nearly every one of which there existed one or more mortgages. The company was insolvent, its preferential indebtedness amounted to nearly four and one half millions, its credit was gone, and many parts of the property were in a wretched condition. The bill was obviously framed upon the theory that an insolvent railroad corporation has a standing in a court of equity to surrender its property into the custody of the court, to be preserved and disposed of according to the rights of its various creditors, and, in the meantime, operated in the public interest."

The right of the court to permit intervention by a party claiming an interest in the property in the hands of a receiver is not affected by the question of citizenship. *Compton* v. *Jesup,* 68

Fed., 263; *Continental Trust Co.* v. *Toledo Ry.*, 82 Fed., 642; *Toledo, St. Louis & K. C. R. Co.* v. *Continental Trust Co.*, 95 Fed., 497.

In *Krippendorf* v. *Hyde*, 110 U. S., 276, 284; the court said: "The question of citizenship which might become material as an element of jurisdiction in a court of the United States, when the proceeding is pending in it, is obviated by treating the intervention of the stranger to the action in his own interest as what Mr. Justice Story calls, in *Clark* v. *Mathewson*, 12 Pet., 164, a dependent bill."

II. The propriety of permitting the intervention, under the circumstances set forth in the bill of the Metropolitan Company, a synopsis of which is contained in the preceding statement of the case, appears to be beyond question.

A court of equity has an undoubted right and it is common practice to permit strangers to the litigation, claiming an interest in the subject-matter, to intervene on their own behalf, and assert their rights. This practice prevails very generally in cases where property is put into the hands of a receiver, and a party applies for leave to intervene for the protection of his rights in the property.

Instances in which interventions have been

permitted in receivership proceedings, include an application of a trustee of a mortgage, claiming a prior right to income, *Atlanta Trust Company* v. *Dana,* 128 Fed. Rep., 209; an application of a contract creditor, *Jones* v. *Sands,* 79 Fed. Rep., 913; an application by a trustee of a mortgage on a leased line, where the leased line had been included under a receivership of the Wabash system, *Central Trust Co.* v. *Wabash Ry.,* 46 Fed. Rep., 26; an application by a Telegraph company, claiming the right to use the right-of-way of a railway company for the erection of a telegraph line, *Mercantile Trust Co.* v. *Atlantic & P. R. Co.,* 63 Fed. Rep., 513; an application of a lesser of a railroad, leased by receivers, who sought to prevent the cancellation of the lease, and to collect the rentals due under the lease, *Chicago Deposit Vault Co.* v. *McNulta,* 153 U. S., 554; applications by lessees of railroads leased to the Wabash system, prior to its insolvency, on claims for rentals, and on motions to prevent cancellation of the leases, *Central Trust Co.* v. *Wabash Ry.,* 34 Fed. Rep., 259; *Quincy Railroad* v. *Humphreys,* 145 U. S., 82; *St. Joseph Railroad* v. *Humphreys,* 145 U. S., 105; applications of persons holding mechanic's liens, who claimed priorities on the property, *Central Trust Company* v. *Bridges,* 57 Fed. Rep., 753; applications of persons claiming to recover damages for the death

of next of kin, by negligence, *Rouse* v. *Letcher*, 156 U. S., 47; and an application by bondholders. *Farmers Loan and Trust Co.* v. *Northern Pacific R. Co.*, 70 Fed. Rep., 423.

The principal grounds for permitting the intervention of the Metropolitan Company are: 1, that the eighteen lines of railway owned and leased by the petitioner had been leased by it to the New York City Railway Company on the agreement of the latter company to pay, by way of rental therefor, the taxes and assessments on the demised properties, all rentals payable on the lines leased to the petitioner, and by it demised to the street railway, interest on the funded debt of the petitioner, other fixed charges of the petitioner, and an amount equal to seven per cent. on the petitioner's capital stock; 2, that the petioner, under the terms of the lease, would be unable to retake possession of its properties so leased to the City Railway, until one year after default in the payment of rentals, or the performance of the other covenants contained in the lease; 3, that all the lines of railway embraced in the lease were subject to funded indebtedness secured by eighteen different mortgages, aggregating over $100,000,000, and that failure to meet the interest on this underlying funded indebtedness as it matures, would constitute a default and render the mortgages enforceable; 4, that the re-

funding mortgage of the petitioner which secured bonds to the amount of $16,604,000, embraced the lines which were leased by it from other parties, and were by it leased to the City Railway, and that under the terms of that mortgage, the petitioner, as between it and the mortgagee, was bound to observe and perform punctually the covenants of the leases under which it leased the railways from other parties, and to pay all rentals under such leases, so that the petitioner's interest in such leasehold estate should remain unimpaired as security for the bonds issued under the mortgage, and that in case of default in the payment of any interest on bonds secured by the refunding mortgage, or in case of failure to perform any of the covenants or conditions in the mortgage which the petitioner was bound to perform, if such default should continue for a period of 60 days after notice, the trustee of the mortgage might become entitled to enforce it by appropriate legal or equitable proceedings; 5, that the lines leased by the petitioner to the City Railway had been operated as a single system, constituting routes over different lines, interchanging equipment, supplying power and using power houses, barns and stations, for the service of the various lines as a whole system, that the equipment of the line had been used in common over the different lines, and that in many cases motive power on the leased or

controlled lines had been changed to electricity without supplying power houses or independent sources of supply for each line, leaving certain of the lines dependent for power on other lines of the system; 6, that the defendant has become insolvent and passed into the hands of receivers, who are in possession of the lines owned and leased by the petitioner, and by it leased to the defendant; 7, that the fixed charges on the petitioner's system were accruing, and installments thereof would be payable on October 1st, 1907, and each month thereafter, and failure to meet them would operate as a default under the mortgage securing the indebtedness, interest on which should so become in default, and would render such mortgage enforceable; 8, that the rentals under leases made to the petitioner were accruing, that instalments thereof would shortly become due, and if not paid, rights of re-entry would become enforceable, while the petitioner would not be able to exercise its rights of re-entry under the lease to the City Railway Company until a year after default, during which period the petitioner's system of railways might become disrupted and disintegrated to the petitioner's irremediable loss; 9, that the value of the petitioner's railway system to the petitioner and to the creditors depends largely on its continued operation as a whole, so that the entire system should be pre-

served; 10, that obligations of the petitioner for capital expenditures which the defendant is bound to pay, and obligations for personal injury claims and judgments which it is also bound to pay, were outstanding; 11, that the petitioner has parted with its entire system of railways to the defendant, and has no other resources wherewith to meet the fixed charges on the mortgage indebtedness, or to meet the accruing rentals on the lines leased by it, and by it leased to the defendant, or to meet judgments for claims for personal injuries, or the outstanding obligations for capital expenditures, or to meet the other indebtedness for liabilities of the petitioner than the rentals reserved under the lease made by the petitioner to the defendant as part of which the defendant agreed to pay all these charges and obligations; and finally, 12, that the petitioner's system of railways is in the possession of the court through its receivers, appointed in the original action, who are collecting the income from it, and that no substantial remedial action can be taken in that suit at the instance of the defendant, or the defendants' creditors, which would not affect the interests of the petitioner, whose rights are inextricably interwoven with the rights that the court has already undertaken to administer in the original cause.

On this state of facts the finding of the Circuit Judge, that the property is an intricate combination of various roads, one or more of which might be cut out of the system by failure to pay the interest on some underlying mortgage, or some rental due to the constituent road, and that it is of vital interest to the petitioner that the property be kept intact, made it, as he said, a proper case for intervention. P. 438.

The propriety of making lessors of railways parties defendant in a suit, either by a creditor, stockholder, or mortgagee, to secure the administration of the assets of an insolvent railway system, where such system includes leased railways, has been repeatedly recognized in the Federal Courts. *Central Trust Company* v. *Wabash Railway Company*, 29 F. R., 618; *Central Trust Company* v. *Wabash Railway Company*, 34 F. R., 259, 260, 261; *Quincey, etc., Ry. Co.* v. *Humphreys*, 145 U. S., 82, 85-89; *St. Joseph, etc., Railway Company* v. *Humphreys*, 145 U. S., 105, 106; *Ames* v. *Union Pacific Company*, 60 F. R., 966, 967, 968; *Central Railroad & Banking Company of Georgia* v. *Farmers Loan & Trust Company*, 79 F. R., 158, 159, 160; *Mercantile Trust Company* v. *St. Louis & San Francisco Ry. Co.*, 71 F. R., 601, 602; *Mercantile Trust Company* v. *Farmers Loan & Trust Company*, 81 F. R., 254, 255-258.

In a number of cases the lessors of branch rail-

roads constituting part of the Wabash system, who had originally been made parties defendant, and whose property was covered by the receivership, were dismissed from the proceeding; yet, subsequently such lessors, or the trustees under the mortgages on such branch railroads, were permitted to intervene and to assert, with respect to rentals and guaranteed interest on the mortgages on the leased lines, a preferred lien on the proceeds of the foreclosure sale under the general mortgage of the Wabash system. *Central Trust Company* v. *Wabash Railway Co.*, 34 Fed. Rep., 259, 262; *United States Trust Company* v. *Wabash*, 150 U. S., 287, 293; *Seney* v. *Wabash Western Ry. Co.*, 150 U. S., 310.

There is no just objection to the action of the court in permitting the Metropolitan Company to intervene.

There is every reason why the Metropolitan Street Railway Company should have been allowed to intervene in this suit and become a party defendant. It is impossible that there should be an expeditious or economical administration of the assets of these two companies otherwise than in one suit in one court. The receivers in the creditors' suit against the New York City Railway Company took possession as they were ordered to do, of all the properties of which the defendant company was lessee. There was no other

way of taking possession of a leasehold interest. The physical properties of the Metropolitan Company were therefore in the possession of the Circuit Court. That company had absolutely no means to pay any of its obligations. It had no means of presenting to the court in which the receivers were appointed its rights in the property in possession of the court, except by becoming a party to the pending cause. In case receivers' certificates were essential to the welfare of both railway companies and their creditors, or of either of the railway companies and its creditors, no one would buy them if they were issued in a suit to which the Metropolitan Company was not a party. From the fact that the court had possession of the property it was impossible, and in the nature of things would necessarily be impossible, for the creditors of the Metropolitan Company, whether general creditors or lien creditors, to have any of the property of the Metropolitan Company applied to their claims, except through the United States Court.

The Metropolitan Company has a right to such a position in the litigation as will enable it effectually to claim that, if its system as a whole can be preserved by the application of the earnings from its system in any particular way, they shall be so applied, or that, if its system as a whole cannot be preserved, these earnings shall be applied in

such a way that the most valuable part of the system shall be preserved. The mere fact that it has an interest in the property as lessor is a justification for making it a party defendant.

An examination of the lease of the Metropolitan Company to the New York City Railway Company and a consideration of the numerous leasehold interests of the Metropolitan Company in other street railway companies and the obligations of the Metropolitan Company and the New York City Railway Company under those leases and of the numerous mortgages covering the whole or parts of the system will show how inextricably interwoven the rights of the Metropolitan Company were with the rights the court had undertaken to administer in the original cause.

In *Krippendorf* v. *Hyde*, 110 U. S., 276, at p. 282, the Court said:

"It is the common practice of the court to permit strangers to the litigation, claiming an interest in its subject-matter, to intervene on their own behalf to assert their titles. * * * The same practice prevails in cases where property is put into the hands of a receiver. * * * The grounds of this procedure are the duty of the court to prevent its process from being abused to the injury of third persons, and to protect its officers and its own custody of property in their possession, so as to defend and preserve its jurisdiction, for no one is allowed to question or disturb that possession except by leave of the court."

See also *Gumbel* v. *Pitkin*, 124 U. S., 132, and *Put-In-Bay Waterworks Co.* v. *Ryan*, 181 U. S., 409, 433.

SECOND POINT.

THE EXTENSION OF THE RECEIVERSHIP IN THE ORIGINAL SUIT TO THE PROPERTY OF THE METROPOLITAN STREET RAILWAY COMPANY UNDER ITS PETITION WAS A PROPER EXERCISE OF JUDICIAL DISCRETION.

There is no question of the jurisdiction of the Court over the petition of the Metropolitan Company apart from the jurisdiction of the original bill. The petition is a dependent application. Jurisdiction over it depends on the fact that the property in respect of which the petition was presented was already in the custody of the court.

The petition, p. 25, showed that all the property of the petitioner was in the custody of the court, under the receivership granted in the original suit; that the income from that property, which constituted the only resources of the petitioner for the payment of its obligations to the owners of railroads which it had leased, and to the holders of its funded indebtedness, had been impounded by the court; that the petitioner was

without resources other than the rental under the lease wherewith to discharge its extensive liabilities and obligations; and that unless the court took the the petitioner's interest in the property under its protection, the value of its system of railway lines would be liable to be greatly impaired, and the system itself disrupted and wasted. The preservation of the unity of its vast system of railways, and the application of the income derived from the lines, to the payment of such obligations as would enable the system to be kept intact, could only be attained by having the court take possession of the interests of the lessor of the property as well as of those of the lessee. Without the protection which a receivership would give, one or a number of the lines which form the system, might be cut out of it before the petitioner would be able to re-take possession, a year hence, because of a default in the payment of rentals.

The necessity of a receivership over the property of the Metropolitan Company was therefore manifest.

The petition filed in this court in the case of Konrad expressly admits that "said defendant and the Metropolitan Street Railway Company are insolvent." P. 2. An adjudication of the insolvency of the petitioner was made November 9, 1907. Pp. 324, 325.

The position in which the original receivership left the Metropolitan Company was accurately stated in the memorandum continuing the receivership over the interests of the petitioner as follows:

"Having taken its entire property into possession of the court, under conditions which left it powerless to recover the same for a year, the receivership left it wholly without means to meet its obligations, and it seems to be clearly the duty of the court, which has thus deprived it of its resources, to protect it against execution while the receivers handle and distribute those resources. Having jurisdiction of the *res* the court acquires jurisdiction of its owner." P. 433.

In this case, the property of the petitioner was physically in the custody of the court under the original receivership. The receivers were operating it and collecting the income from it. If, therefore, the owner of the property was willing to submit itself and its property to the jurisdiction of the court, as it did, under the petition, admitting that it was without resources for the payment of its liabilities, apart from the income which the court was receiving from the property itself, the court acquired complete jurisdiction to extend the receivership over such property. In the Wabash Cases the receivership was granted on the application of the

railroad, in a suit begun by it against its mortgage creditors, in which a number of railroads leased by it were made defendants. *Wabash Ry.* v. *Central Trust Co.*, 22 Fed. Rep., 272, 273; *Central Trust Co.* v. *Wabash Railway*, 29 Fed. Rep., 618; *Central Trust Co.* v. *Wabash Railway*, 34 Fed. Rep., 259, 260, 261; *cf. Quincy Ry.* v. *Humphreys*, 145 U. S., 82, 95

A receivership was granted by Judge Shipman over the New England Railway under similar circumstances. *Brassey* v. *New York and N. E. R. Co.*, 19 Fed. Rep., 663. There are other instances in which a similar practice was followed.

It was obviously for the interest and benefit of the Metropolitan Street Railway Company and its creditors that the receivership should be extended to it, in order to prevent the loss or impairment of valuable rights and properties owned by and leased to it. The lease of the Metropolitan Street Railway Company to the New York City Railway Company by section 21 provided that in case any default should occur on the part of the lessee in the payment of rent or in the performance of the covenants and such default should continue for twelve months after written demand and notice from the lessor to the lessee, then at the option of the lessor the estate should cease and the lessor should be entitled to re-enter. It has been suggested that the Metropolitan Company, notwith-

standing article 21 of the lease, is entitled to get back its property on demand. If there is a just ground for dispute as to the time when the lessor is entitled to regain its property, pending the settlement of that dispute in the courts, the receivers should be receivers for both companies, so that all moneys coming into their hands may be disposed of on equitable principles in such a way as will be most beneficial to both parties and creditors.

On the assumption that the lessor has not the right to re-enter for a year, the Metropolitan Company nevertheless should have the right during that year to see that the money derived from the operation of its property is applied in the manner in which it was stipulated it should be applied at the time possession of its property was delivered over to the lessee. If its income should not be so applied and as a consequence during that year valuable leases should be lost to it by reason of the failure to pay the rental due by the Metropolitan thereon, the property of the Metropolitan Company would be wasted. But it is not necessary that a clear case of waste should be made out; it is enough to say that, the property being in the possession of a court of equity, the distribution of the income should be in accordance with equitable principles.

The court found that under the terms of the lease the petitioner would be unable to retake

possession of its property until a year after default and notice. P. 438. But notwithstanding the lessor might not have the right to re-enter for a year, it should have the right secured to it, during that year, to see that the money derived from the operation of its property is applied in the manner in which it has been stipulated, under the lease, that it should be applied; for if the income should not be so applied, and as a consequence, valuable leased lines should be lost to it, by reason of the failure to pay the rental due by the Metropolitan Company thereon, the system of the Metropolitan Company would be disrupted, and its property wasted. It would also be subject to be wasted by innumerable suits arising from the liabilities of the Metropolitan Company to the subordinate companies and to others, which the Metropolitan Company is unable to discharge because its only resources for the payment of such liabilities are in the possession of the court.

The petition set forth the usual grounds for the administration by a court of equity of the assets of an insolvent railway corporation. It described the property, and showed that the physical possession of it had already been acquired by the court, and that the petitioner had no means with which to discharge the extensive liabilities that were about to come in respect of its property, other than the rentals due to it from the defendant,

which the defendant, by reason of its insolvency, was apparently unable to pay, and the income from the property itself which the court was proceeding to collect. These facts, and the further fact that the rights of the public and the petitioner's creditors would be unfavorably affected by the failure to preserve the system intact and unimpaired, afforded ample ground for the exercise of a sound judicial discretion in the appointment of the receiver.

The right to appoint a receiver under such circumstances is discretionary, depending on a just consideration of the rights of the petitioner and others interested in the property, and of the public. *Milwaukee & Minnesota Railroay Co.* v. *Sooter*, 154 U. S., 540, 541; *Bosworth* v. *St. Louis Terminal Railroad Assn.*, 174 U. S., 182, 186, 187; *Sage* v. *Memphis R. R.*, 125 U. S., 361, 376.

The court, in granting the petition, carefully considered the rights, both of the petitioner and of the public, and the opinions filed, laid stress on the benefits which the interests of the public would receive by the granting of the application. Pp. 439, 433, 434, 435.

The question whether or not the court erred in granting the application, therefore, relates rather to the propriety of the exercise of judicial discretion and authority than to the power of the court to act. *Sage* v. *Memphis Ry. Co., Supra*, at pp. 375, 376.

THIRD POINT.

THE CASE PRESENTED BY THE PETITIONERS DOES NOT SHOW THAT THEY ARE ENTITLED TO A WRIT OF MANDAMUS OR OF PROHIBITION.

The purpose of the application seems to be either to obtain a review of the discretionary action of the Circuit Judge in denying the application of Reisenberg and Gallagher for leave to intervene and become parties to the Metropolitan Street Railway Receivership proceeding, or to obtain the issuance of a writ directing the dismissal of that proceeding in the Circuit Court.

The prayer of the petitioner asks the court to grant one or more of three specified remedies:

1, a writ of mandamus commanding the court to dismiss the bill of complaint and all proceedings therein, and to vacate the orders appointing the receivers, and to desist from exercising any further jurisdiction in the suit, except the entry of an order dismissing the suit;

2, or, in the alternative, a writ of mandamus commanding the court to allow the intervention of the petitioners in the said suit;

3, or, in the alternative, a writ of prohibition forbidding the court from taking any further proceedings in the suit or in connection with the receiverships.

The first and third prayers for relief are based on an assumed absence of jurisdiction in the Circuit Court; the second on an assumed error in denying the prayer of the petition of these applicants for leave to intervene.

It is manifest that a writ of mandamus directing the court below to permit the complainant to intervene, should not be issued. The question whether an alleged tort creditor shall be permitted to intervene and become a party to a receivership proceeding is one of discretion. A creditor has no absolute right to be made a party to such a proceeding. *Sands* v. *E. S. Greeley & Co.* 80 F. R., 195, 196. This court has refused to issue a writ of mandamus to compel the circuit court to allow an appeal from a decree by a person whose petition for leave to intervene as a party had not been granted. *Ex parte Cutting,* 94 U. S., 14, 20, 21. It would seem to follow that a mandamus would not lie to compel the court to exercise its discretion in favor of the petitioners by granting leave to intervene. *White* v. *United States,* 1 Wall., 660; *Ex parte Bradstreet,* 7 Peters, 634; *Life Insurance Co.* v. *Adams,* 9 Peters, 573; In re *Burdett,* 127 U. S., 771; *In re Streep,* 156 U. S., 207; *In re Morrison,* 147 U. S., 14; *In re Rice,* 155 U. S., 396.

The prayer for a mandamus or for a prohibition on the first or the third ground stated in the petition is based on an assumption of want of

jurisdiction in the court to entertain or proceed with the Metropolitan Company's intervention and receivership. The right to either of the writs on that ground is not made out.

a. A mandamus does not issue to compel a lower court to dismiss a proceeding, or to cease exercising jurisdiction in it, unless it appears on the face of the record that the court is *without power to act,* either because it is without jurisdiction of the subject matter, or has not obtained jurisdiction over the parties. *Ex parte Bradley,* 7 Wall., 364; *Virginia* v. *Paul,* 148 U. S., 107; *Kentucky* v. *Powers,* 201 U. S., 1; *Ex parte Wisner,* 203 U. S., 449; *Virginia* v. *Reeves,* 100 U. S., 313. Where the court has power to act, but acts or threatens to act wrongly, the remedy is not by mandamus. In *Ex parte Railway Company,* 101 U. S., 711, at p. Mr. Justice Harlan said:

"It is not consistent with the principles and usages of law that we should in that summary mode revise the action of inferior courts as to matters about which they must or may exercise judicial discretion. The writ has never been extended so far nor ever used to control the discretion and judgment of an inferior court of record acting within the scope of its judicial authority. *Ex parte Taylor,* 14 How., 3; *Ex parte Many, id.,* 24; *United States* v. *Lawrence,* 3 Dall., 42; *Life & Fire Insurance Co. of New York* v. *Wilson's Heirs,* 8 Peters, 291; *Ex parte Hoyt,* 13 *id.,* 279; *Ex parte Myra Clarke Whitney, id.,* 444; *Ex parte Newman,* 14 Wall., 152."

As the Circuit Court had jurisdiction of the petitioner, and had physical possession of the property, it obviously had power to act, if the original proceeding, on which the intervention depends, was within the jurisdiction of the court. If the court had power to act in the original proceeding, any action taken therein, or with reference to the intervention, might be subject to review by appeal, but not by mandamus. The fact that these petitioners may have no right of appeal is unimportant. The court refuses to issue a mandamus simply because the party applying for it has no right of appeal. It is not the office of a mandamus to enable proceedings to be reviewed by what would be in effect an appeal. The writ cannot serve the purpose of a writ of error or of an appeal. *Taylor, Jurisdiction and Procedure of the Supreme Court*, pp. 533, 534, 535.

b. No case for the issuance of a writ of prohibition is made out.

In *Smith* v. *Whitney*, 116 U. S., 167, Mr. Justice Gray, in speaking of the office of the writ of prohibition at page 176, said: "The object of a writ of prohibition is to prevent a court of peculiar, limited or inferior jurisdiction from assuming jurisdiction of a matter beyond its legal cognizance. It can only be issued to restrain the exercise of judicial functions. * * * A writ of

prohibition is never to be issued unless it clearly appears that the inferior court is about to exceed its jurisdiction. It cannot be made to serve the purpose of a writ of error or *certiorari*, to correct mistakes of that Court in deciding any question of law or fact *within* its jurisdiction." Similarly in *Re Cooper*, 143 U. S., 472, 495, the Chief Justice said:

"The writ thus provided for by section 688 * * * lies to a Court of Admiralty only when that Court is acting in excess of or is taking cognizance of matters not arising within its jurisdiction. Its office is to prevent an unlawful assumption of jurisdiction."

In *Re Rice*, 155 U. S., 396, Mr. Chief Justice Fuller announced the rule governing the issuance of writs of prohibition as follows, p. 402:

"Where it appears that the court whose action is sought to be prohibited has clearly no jurisdiction of the cause originally, or of some collateral matter arising therein, a party who has objected to the jurisiction at the outset and has no other remedy is entitled to a writ of prohibition as a matter of *right*. But where there is another legal remedy by appeal or otherwise, or where the question of jurisdiction of the court is doubtful, or depends on facts which are not made matter of record, or where the application is made by a stranger, the granting or refusal of the writ is *discretionary*. Nor is the granting of the writ obligatory where the case has gone to sentence, and the want of jurisdiction does not appear upon the face of the proceedings."

The petitioners are not entitled to a writ of prohibition as a matter of right. In order to become entitled to that right, the person applying for it must be "a party," and one "who objected to the jurisdiction at the outset." *In Re Rice, supra.*

The petitioners are not parties to the cause. Their application to become parties has been refused. Moreover, they had not objected "at the outset" to the jurisdiction to entertain the application of the Metropolitan Company, or to grant the relief prayed for therein. They nowhere in their petition, which was presented to the Circuit Judge, made the slightest suggestion that he was without jurisdiction to entertain the Metropolitan petition, or to grant the relief prayed for, nor did they make any such suggestion in the petition in the Konrad case, which was incorporated and made a part of the petition in the Reisenberg and Gallagher case. Pp. 294-313. Nothing in either of the petitions tended to raise a doubt in the mind of the Circuit Judge as to his jurisdiction over the Metropolitan proceeding, except as that proceeding might depend on the jurisdiction of the court over the original suit of the Pennsylvania Steel Company against the New York City Railway Company. For this reason, also, as the application cannot be entertained on grounds *dehors* the record, *Ex Parte Easton,* 95 U. S., 68,

77, *Ex Parte Christie*, 3 How., 292, 308, the writ should be refused.

Though the court intimates, in the *Rice* case, that the granting or refusal of the writ may be discretionary, where the question of the jurisdiction of the court is doubtful, or where the application is made by a stranger, it is not granted, in practice, except for want of power in the court below to act. Questions of jurisdiction, as well as questions on the merits, can still be raised in this case by appeal; and it is submitted that where questions of jurisdiction are at all doubtful they should be left to be raised and disposed of in that manner. Though these petitioners may be unable to appeal, it cannot be assumed that a committee or committees of stockholders, or of bondholders, or, perhaps a representative of a committee of damage claimants, may not apply and be granted leave to intervene, and thus secure the right to appeal. No doubt a reason for denying the application of these petitioners to intervene was that they merely represent single claims, two or three out of several thousand of that class. If individual claimants should be admitted to the case, no reason could be assigned for the exclusion of other similar claimants, and in the end the proceeding would be unnecessarily encumbered by numerous

parties whose rights could be equally well protected by the presentation of their claims to the special master. *Sands v. E. S. Greely & Co.*, 80 F. R., 195, 196.

The discretion of the Court, insofar as the granting of either of the writs to strangers may be discretionary should be exercised against the petitioners. Their claims, one of which arose in June, 1892, and the other in June, 1895, 15 and 12 years ago, respectively, are so stale as to create a presumption that they are without merit. The actions brought in the Supreme Court of the State of New York, on the claims have never been brought to trial.

Moreover, it is not too late for the question sought to be raised by the petitioners to be reviewed on appeal by other parties to the proceeding or by persons who may become parties. The Court below had power to act, and the alleged errors in its action of which the petitioners complain are such as would more properly be reviewed by appeal than through the medium of either of the great writs.

In this connection the attention of the Court should, perhaps, be drawn to some other features of the case. The receivers, acting under the authority conferred on them by the Court, have undertaken large obligations for repairs to the

property, for new equipment, and for betterments. *Return*, pp. 441-451. Unless some paramount necessity would seem to require it, the property should not be deprived of the benefit which is being conferred and will be conferred on it in pursuance of the obligations already undertaken by the receivers. The position in which the receivers would be left, if a mandamus or a prohibition should be issued, may not improperly be also considered. Furthermore, the Morton Trust Company, trustee under the refunding mortgage, which considered itself entitled to foreclose that mortgage, was compelled to institute foreclosure proceedings, p. 381, in the Circuit Court, by reason of the fact that the mortgaged property was in possession of that Court. *Morgan's Co.* v. *Texas Central*, 137 U. S., 201; *Compton* v. *Jessup*, 15 C. C. A., 397; *Toledo, etc. R. R. Co.* v. *Continental Trust Co.*, 95 F. R., 497; *Freeman* v. *Howe*, 24 How., 450; *Krippendorf* v. *Hyde*, 110 U. S., 276; *Gumbel* v. *Pitkin*, 124 U. S., 131. The same receivers have been appointed under the foreclosure proceedings. P. 426. Having been compelled to go into the Federal Court, originally, to institute its foreclosure proceedings, and obtain a receivership thereunder, it would seem that the mortgagee must have the right to have the proceedings concluded in that court. *Put-In-Bay Waterworks Co.* v. *Ryan*, 181 U. S., 409,

433. The circumstance that the receivership over the property seems likely to continue, in any event, under the foreclosure proceedings, makes it undesirable to deprive the court of jurisdiction over the other proceedings involving the same property unless there is some paramount reason for doing so. No such reason appears in the record.

LAST POINT.

THE APPLICATION FOR THE WRIT OF MANDAMUS OR THE WRIT OF PROHIBITION SHOULD BE DENIED.

Respectfully submitted,

J. PARKER KIRLIN,
Of Counsel for Respondents.

New York, December 7, 1907.

In the Supreme Court of the United States.

In the Matter

of

The Application of Joseph Konrad, individually and as Administrator of Paul Planovsky, deceased, for a Writ of Mandamus against the Honorable E. Henry Lacombe, Circuit Judge of the United States for the Second Circuit, and against the Circuit Court of the United States for the Southern District of New York.

To the Honorable the Supreme Court of the United States:

And now comes the Petitioners Paul Fuller, J. Hampden Dougherty and Melvin G. Palliser, as Receivers of the New York City Railway Company, by virtue of their appointment by the Supreme Court of said State, appearing by Frederic R. Coudert, their attorney and counsel, and move for leave to file the annexed petition by way of suggestion herein.

Frederic R. Coudert,
Attorney and Counsel for Petitioners,
No. 2 Rector Street,
Borough of Manhattan,
N. Y. C.

IN THE SUPREME COURT OF THE UNITED STATES.

In the Matter

of

The Application of Joseph Konrad, individually and as Administrator of Paul Planovsky, deceased, for a Writ of Mandamus against the Honorable E. Henry Lacombe, Circuit Judge of the United States for the Second Circuit, and against the Circuit Court of the United States for the Southern District of New York.

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

Paul Fuller, J. Hampden Dougherty and Melvin G. Palliser, as Receivers of the New York City Railway Company by virtue of an order of the Supreme Court of the State of New York, appearing herein by Frederic R. Coudert, their attorney and counsel, respectfully petition this Court and show:

First.—That the New York City Railway Company is a corporation organized and existing under and by virtue of the laws of the said State of New York, and as such corporation is subject to the laws of said State.

Second.—That the laws of said State provide 7
that the Attorney General of the State of New York may maintain an action in the name and behalf of the People of the State of New York to procure a judgment dissolving a corporation organized under its laws, when said corporation has remained insolvent for at least one year; that the laws of said State also provide that a Receiver of the property of said corporation may be appointed during the pendency of the action.

Third.—That heretofore and on or about the 30th day of September, 1907, the Attorney Gen-
eral of the State of New York, in pursuance of 8
said laws, commenced in the Supreme Court of said State an action against the New York City Railway Company for a judgment dissolving such company on the ground that it had remained insolvent for more than one year.

Fourth.—That in such action and on the 29th day of November, 1907, the said Supreme Court made an order appointing the petitioners Paul Fuller, J. Hampden Dougherty and Melvin G. Palliser, temporary Receivers of the New York City Railway Company.

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Fifth.—That your petitioners, while not appearing or intervening in this proceeding and in no manner intending to concede the jurisdiction of the Circuit Court of the United States for the Southern District of New York to appoint Receivers as in the return to the petition herein is stated, and without waiving any objection to the matters alleged in either the petition or the return, beg respectfully to advise this Court that

some of the matters purporting to be presented by the petition and the question of the jurisdiction of the Circuit Court and of alleged collusion between the parties in the action therein brought for the purpose of creating a case cognizable in the Federal Courts may hereafter be presented to this Court on behalf of the said Receivers appointed by the Supreme Court of the State of New York.

WHEREFORE your petitioners pray that they may be allowed to file this petition and that any action herein may be without prejudice to their rights in the premises.

PAUL FULLER,
J. HAMPDEN DOUGHERTY, and
MELVIN G. PALLISER,
Petitioners.

FREDERIC R. COUDERT,
Attorney and Counsel for the Receivers.

In the Supreme Court of the United States.

In the Matter

of

The Application of Daniel Gallagher and Francis R. Reisenberg, for a Writ of Mandamus against the Honorable E. Henry Lacombe, Circuit Judge of the United States for the Second Circuit and against the Circuit Court of the United States for the Southern District of New York.

AND now comes the Petitioners, Paul Fuller, J. Hampden Dougherty and Melvin G. Palliser, as Receivers of the Metropolitan Street Railway Company, by virtue of their appointment by the Supreme Court of said State, appearing by Frederic R. Coudert, their attorney and counsel and move for leave to file the annexed Petition by way of suggestion herein.

FREDERIC R. COUDERT,
Attorney and Counsel for Petitioners,
2 Rector Street,
New York City.

IN THE SUPREME COURT OF THE UNITED STATES.

In the Matter

of

The Application of Daniel Gallagher and Francis R. Reisenberg, for a Writ of Mandamus against the Hon. E. Henry Lacombe, Circuit Judge of the United States for the Second Circuit and against the Circuit Court of the United States for the Southern District of New York.

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

Paul Fuller, J. Hampden Dougherty, Melvin G. Palliser as Receivers of the Metropolitan Street Railway Company, by virtue of an order of the Supreme Court of the State of New York, appearing herein by Frederic R. Coudert, their attorney and counsel, respectfully petition this Court and show:

First.—That the Metropolitan Street Railway Company is a corporation organized and existing under and by virtue of the laws of the said State of New York, and as such corporation is subject to the laws of said State.

Second.—That the laws of said State provide 7
that the Attorney General of the State of New York may maintain an action in the name and behalf of the People of the State of New York to procure a judgment dissolving a corporation organized under its law when said corporation has remained insolvent for at least one year; that the laws of said State also provide that a Receiver of the property of said corporation may be appointed during the pendency of the action.

Third.—That heretofore and on or about the 30th day of September, 1907, the Attorney General of the State of New York, in pursuance of such 8
laws, commenced in the Supreme Court of said State an action against the Metropolitan Street Railway Co. for a judgment dissolving such Company on the ground that it had remained insolvent for more than one year.

Fourth.—That in such action and on the 29th day of November, 1907, the said Supreme Court made an order appointing the petitioners Paul Fuller, J. Hampden Dougherty and Melvin G. Palliser, temporary receivers of the Metropolitan Street Railway Company.

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Fifth.—That your petitioners, while not appearing or intervening in this proceeding and in no manner intending to concede the jurisdiction of the Circuit Court of the United States for the Southern District of New York to appoint Receivers as in the return of the petition herein is stated, and without waiving any objection to the matters alleged in either the petition or the return, beg respectfully to

advise this Court that some of the matters purporting to be presented by the petition and the question of the jurisdiction of the Circuit Court and of alleged collusion between the parties in the action therein brought for the purpose of creating a case cognizable in the Federal Courts may hereafter be presented to this Court on behalf of the said Receivers appointed by the Supreme Court of the State of New York.

WHEREFORE, your petitioners pray that they may be allowed to file this petition and that any action herein may be without prejudice to their rights in the premises.

PAUL FULLER,
J. HAMPDEN DOUGHERTY,
MELVIN G. PALLISER,
Petitioners.

FREDERIC R. COUDERT,
Attorney and Counsel for the Receivers.

Office Supreme Court, U. S.
FILED.
DEC 9 1907
JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

NO. 12.

(ORIGINAL.)

IN THE MATTER

OF

THE APPLICATION OF JOSEPH KONRAD, INDIVIDUALLY AND AS ADMINISTRATOR OF PAUL PLANOVSKY, DECEASED, FOR A WRIT OF MANDAMUS AGAINST THE HONORABLE E. HENRY LACOMBE, CIRCUIT JUDGE OF THE UNITED STATES FOR THE SECOND CIRCUIT, AND AGAINST THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF IN OPPOSITION TO APPLICATION FOR WRIT OF MANDAMUS.

JAMES BYRNE,
Of Counsel.

Washington, December 9, 1907.

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SUPREME COURT OF THE UNITED STATES,

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BRIEF IN OPPOSITION TO APPLICATION FOR WRIT OF MANDAMUS.

STATEMENT.

The court below has considered that the proper return to the order to show cause in this matter is a presentation of all parts of the record that can have any bearing on the questions raised by the petition.

The exhibits have an independent paging; all page references in this brief are to this separate paging.

From the return it appears that on September 24, 1907, The Pennsylvania Steel Company and The Degnon Contracting Company, citizens and residents respectively of the States of Pennsylvania and New Jersey, filed a bill in equity in the United States Circuit

Court for the Southern District of New York against the New York City Railway Company, a citizen and resident of the State of New York (Exhibit A, pp. 1–16).

The bill alleged that the defendant was indebted to The Pennsylvania Steel Company in the sum of $36,831.38 for rails and track materials furnished by it to the defendant at the request of the defendant and for which the defendant had agreed to pay; that payment had been demanded and refused; that the rails and track materials were supplied to the defendant for the purposes of the operation of its street railway system and to enable the defendant to comply with and fulfill the duty towards the public which the defendant, as well as the respective lessors of the defendant, owed to the public (Exhibit A, pp. 7–8).

The bill further alleged that the defendant was indebted to The Degnon Contracting Company for work and labor done at the request of the defendant in the sum of $11,173.27; that payment thereof had been duly demanded and payment had been refused (Exhibit A, p. 8).

The bill further alleged that the defendant owned certain lines of street railway in the Borough of the Bronx, in the City of New York, and was also in the possession of, and operated, the system of street railways of the Metroplitan Street Railway Company in that City under a lease dated March 21, 1902, made to the defendant by the Metropolitan Street Railway Company; that the term of the lease was 999 years; that the lease embraced not only the lines owned by the Metropolitan

Street Railway Company but all lines leased to it, including, among others, the lines of the Third Avenue Railroad Company, which that Company, by lease, dated April 13, 1900, had demised to the Metropolitan Street Railway Company for the term of 999 years; that the lease made by the Metropolitan Street Railway Company to the defendant embraced the lines also of some ten other railroads; that the total mileage of the system of the defendant was upwards of 500 miles and embraced practically the entire surface traction system in the Boroughs of Manhattan and the Bronx in the City of New York; that by the lease of the Metropolitan Street Railway Company to the defendant it was provided that, in case the lessee should fail to pay the rent provided for in the lease as the same should accrue and any such default should continue twelve months after written demand and notice, the leasehold estate at the option of the lessor should be immediately terminated (Exhibit A, pp. 2–4).

The bill further alleged that the lines of railway owned by the defendant were not subject to mortgage but that the lines embraced in its system were subject to a great many mortgages, some on practically all of the system and some on parts of it; that among other mortgages was the Metropolitan Street Railway Company General and Collateral Trust Mortgage, securing outstanding bonds of $12,500,000, and the Metropolitan Street Railway Company Refunding Mortgage, securing outstanding bonds of over $16,000,000; that failure to meet the interest on the mortgage indebtedness as it

matured would operate as a default under the mortgage securing the indebtedness, the interest on which should so become in default, and render the mortgage enforcible (Exhibit A, pp. 4–6).

The bill further alleged that since entering into possession under the lease from the Metropolitan Street Railway Company the defendant had operated all the lines owned and leased by it as parts of a single system constituting routes over different lines or parts of lines, connecting separated lines over parts of intermediate leased lines or lines of controlled companies, interchanging equipment among the various lines, supplying power and using power houses, car barns and stations as seemed best for the effective and economical operation of the system as a whole; that in many cases the motive power employed on leased lines had been changed to electricity without supplying said lines with independent power houses, leaving such lines dependent for power upon other lines of the system (Exhibit A, p. 7).

The bill further alleged that since entering into possession of the premises under the lease made by the Metropolitan Street Railway Company, the defendant had expended more than twenty million dollars in making extensions, improvements and additions upon the lines of its system; that the expenditure had greatly benefited the system, but the expenditures required had exceeded the resources of the defendant; that it had recently entered into contracts for electrification which were in course of performance; that the ultimate liability of the defendant thereunder would be upwards of $4,000-

000; that it was unable to meet such liability; that, notwithstanding large amounts had been expended in the purchase of materials in connection with such electrification, such work must be suspended with heavy loss to the defendant; that the defendant had been required to make large expenditures for maintenance and replacement of equipment; that the equipment would shortly be deliverable and the defendant was unable to pay therefor; that the defendant had outstanding floating indebtedness for materials, equipment, taxes and supplies to the amount of upwards of $2,000,000; that claims for special franchise taxes in litigation amounted to over $3,000,000, and the Comptroller of the State of New York was pressing for payment of these taxes; that the floating indebtedness was overdue and the defendant was unable to pay the same and the holders were pressing for payment; that the defendant had no means at hand with which to meet its immediate pressing needs in operating its system; that many of its creditors were pressing for immediate payment; that some of them might bring suits in respect to their claims and levy execution on the lines of railroad owned by the defendant and the materials and supplies, that the defendant was insolvent, and that it was essential to the interests of the defendant and of the public and of the complainants that the property of the defendant should not be sacrificed (Exhibit A, pp. 8–12).

The bill contained the usual allegations which have appeared for many years in bills under which the assets of insolvent railway corporations have been

administered in the United States Courts, and prayed that the rights of all the complainants and the other creditors of the defendant should be ascertained and decreed and that the court should administer the assets of the defendant, marshal the assets, ascertain the respective liens and priorities thereon, and appoint a receiver (Exhibit A, pp. 8–13).

A subpœna was issued upon the bill and service was made upon the defendant (Exhibit A2 and Exhibit A3, pp. 16–17).

Shortly thereafter on the same day a sworn answer to the bill was filed admitting all its allegations (Exhibit B, pp. 18–19). The bill and answer were presented to the Circuit Judge by counsel for the respective parties; and upon motion by complainants, assented to by defendant, a decree appointing temporary receivers of the New York City Railway Company was signed and entered (Exhibit C, pp. 21–24).

In a clause of the decree ordering the parties to show cause before the court on the 7th of October, 1907, why the receivership should not be continued during the pendency of the suit, it was provided that "upon the hearing thereon any other creditor of the defendant or other party in interest may be heard." (This is in accordance with the practice of the Circuit Court in New York. When temporary receivers are appointed any creditors or any persons in interest are allowed to be heard before the decree is made continuing the receivership.)

The receivers immediately qualified and entered upon

the performance of their duties as receivers in accordance with the terms of the decree, taking possession of all the railroads owned, leased and operated by the defendant.

Thereafter the Metropolitan Street Railway Company presented its petition to the Circuit Court alleging that the case of The Pennsylvania Steel Company and The Degnon Contracting Company against New York City Railway Company was a general creditors' suit for the administration of the assets and property of the defendant; that Adrian H. Joline and Douglas Robinson had been appointed receivers and had qualified and were operating the street railroads under the receivership order; that the Metropolitan Street Railway Company was a consolidated corporation owning various street railways in New York City and leasing ten or more other street railways; that by each of the indentures of lease a right of re-entry was reserved to the lessor in the event of default in the payment of rent; that by indenture of lease dated March 21, 1902, between the Metropolitan Street Railway Company and the defendant New York City Railway Company, which then bore the name of Interurban Street Railway Company, the Metropolitan Street Railway Company leased to the New York City Railway Company its entire system of street railways, the lessee agreeing to pay by way of rental, in addition to all taxes and assessments on the demised properties, all rentals payable under the leases of the lines leased to the Metropolitan Street Railway Company and interest on the funded debt of

the Metropolitan Street Railway Company and its other fixed charges, and an amount equal to seven per cent. per annum upon the existing capital stock of the Metropolitan Street Railway Company; that the lease provided among other things that in case the lessee should fail at any time to pay the rent or to keep any of the covenants in the lease and such default should continue for twelve months after written demand and notice, then at the option of the lessor it, the lessor, might re-enter; that the various lines of railway embraced in the lease, both the lines owned by the Metropolitan and the lines leased by the Metropolitan, were subject to funded indebtedness secured by mortgage; that by the Refunding Mortgage of the Metropolitan Street Railway Company, it agreed to perform all obligations incurred under any lease thereby mortgaged, and the Refunding Mortgage provided that in case default should be made in the due observance or performance of any of the covenants or conditions in the Refunding Mortgage or in the payment of the interest on any of the bonds secured by the Refunding Mortgage, there might be a foreclosure; that the fixed charges of the Metropolitan system were accruing each month; that rentals under leases made to the Metropolitan Street Railway Company were accruing; that it was of importance to the Metropolitan Street Railway Company and to its creditors that its railroad system should be operated as a whole; that by the lease to the New York City Railway Company, the lessee was bound to finance the requirements of the lessor for capital expenditures;

that by the lease the Metropolitan Street Railway Company had parted with the possession of its entire system, and had no other resources wherewith to meet the fixed charges on the mortgage and indebtedness of the system so leased, or to meet the accruing rentals or to meet other indebtedness or liabilities of the Metropolitan Street Railway Company than the rentals reserved under the lease made by the Metropolitan Street Railway Company to the New York City Railway Company; that the system was in possession of the court, through its receivers, appointed for administration in accordance with equitable principles; that no substantial remedial action could be taken in this case at the instance of the New York City Railway Company, or at the instance of the creditors of that Company which would not affect the rights of the Metropolitan Street Railway Company; that the rights of the Metropolitan Street Railway Company were inextricably interwoven with the rights which the court had undertaken to administer; and prayed that the Metropolitan Street Railway Company might become a party defendant to the suit, and that the receivership should be extended to embrace the interests of the Metropolitan Street Railway Company, it submitting itself and its property to the jurisdiction of the court, and for other and further relief (Exhibit D, pp. 25–34).

Annexed to the petition were a copy of the lease of the Metropolitan Street Railway Company, referred to in the petition (Schedule A, pp. 35 *et seq.*) and the Refunding Mortgage of the Metropolitan Street Railway

Company to the Morton Trust Company as trustee, dated March 21, 1902 (Schedule B, pp. 94 *et seq.*).

Thereupon an order was made, making the Metropolitan Street Railway Company a party defendant in the cause and appointing Joline and Robinson receivers of its properties (Exhibit E, pp. 213–214). See opinion, Exhibit U.

On October 7, upon the return day of the order to show cause (contained in the decree of September 24, appointing temporary receivers) why the receivership should not be continued, Joseph Konrad, a tort creditor having a judgment against the New York City Railway Company which had been appealed and secured on appeal, and Daniel Gallagher and Francis S. Reisenberg, claiming to be tort creditors of the Metropolitan Street Railway Company, appeared by Mr. Roger Foster, and certain other tort creditors appeared by Mr. Gilbert Ray Hawes. Counsel for the complainants and for the Metropolitan Street Railway Company argued in favor of making the appointment of the receivers permanent and Mr. Foster and Mr. Hawes argued in opposition. The decision of the court on the application to make the receivers permanent appears as Exhibit T (pp. 430–7).

The court said:

> "The suit at bar was brought by two general creditors of the New York City Railway Company to recover several thousand dollars for materials, and for work, labor and services. Both complainants are residents of New Jersey and defendant is a resident of New York. The bill, in the form

usual in these cases, sets forth their claims and asserts that the defendant is insolvent and unable to pay its present obligations and is overwhelmed with heavy liabilities soon falling due, while its property consists of a leasehold of a system of street-railroads composed of many component roads to whom or to whose bondholders payments are coming due, default in the payment of which may interfere with the operation of the system. Answer was put in promptly after the filing of the bill, admitting all its allegations and uniting in the application for appointment of receivers. Upon the facts thus presented to the Court the complainants were entitled, under a multitude of precedents too well-known to cite, to the appointment of receivers to marshal the property, ascertain the liabilities and distribute what assets there might be among all entitled to them according to the rules and principles of equity. The complainants, it is true, did not have judgments for their respective claims with execution returned unsatisfied, but since Hollins v. Brierfield Coal Co., 150 U. S., it has always been understood by federal judges that in the opinion of the Supreme Court such prerequisites were solely for the benefit of the defendant, and when waived by him became non-essential. It is now suggested that there was "collusion" in the proceedings resulting in decree appointing temporary receivers, and reference is made to Section 5 of the Judiciary Act of 1875 which provides that if it shall appear to the satisfaction of the Circuit Court that a suit "does not really and substantially involve a dispute or controversy properly within the jurisdiction of said circuit court, or that the parties to said suit

have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this act, the said circuit court shall proceed no further therein, but shall dismiss the suit, etc."

A controversy is certainly set forth in the complaint and it seems to be an entirely novel proposition that it ceases to exist as a justiciable controversy as soon as defendant admits the allegations of the complaint. If that were so courts would be powerless to enter judgments for undisputed claims since they sit only to dispose of controversies. This court disposed of that question in Park v. N. Y. L. E. & W. R. R. 70 F. R. 641. There is no collusion apparent in any legal sense. It is of course manifest that complainants and defendant were entirely in accord and arranged together that the suit should be brought to the federal court and that the averments of the bill should be admitted by the answer. But there was no colorable assignment of some claim to a citizen of another state, nor any misrepresentation or distortion of facts to mislead the court. On the contrary examination of the books shows that the financial situation is precisely such as was averred in the complaint.

We have then a controversy between citizens of different states and of the statutory amount presented to a federal court of competent jurisdiction. Parties to such a controversy would seem to be entitled as of right to have such court take jurisdiction of it. It surely cannot be that the court can escape the burden of disposing of the questions it may present, however numerous or difficult they may be, merely by finding that both parties elected

to seek that tribunal, and then calling such joint election "collusion" under the act of 1875. Expression of judicial opinion in harmony with these statements will be found in Brassey v. N. Y. & N. E. R. R. 19 F. R. 663; Dickerman v. Northern Trust Co. 176 U. S. 191; and Blair v. City of Chicago, 201 U. S. 400.

It was suggested by counsel that these are state corporations, that their properties are located in the State to be operated under state laws, that the mortgages on them were made in the state, that the state has statutes and courts and machinery for conducting any receivership which may be required, that the administrative detail of conducting such a receivership will be enormous and proper attention to it most irksome and laborious; that in the state the work of supervision can be divided among seventeen judges while here there is but one to attend to it. All these may be very good reasons why the parties might have taken their controversy and all that its determination entails into the state courts; but they will not justify any court in barring its doors to a litigant who comes with a controversy which the Constitution and the laws give him the right to bring before that court.

As to the Metropolitan Street Railway Company, the reasons for allowing it to intervene as a party defendant and for extending receivership over its property were sufficiently set forth in the memorandum filed on October 1st. Having taken its entire property into possession of the court under conditions which left it powerless to recover the same for a year, the receivership left it wholly without means to meet its obligations and it seems

to be clearly the duty of the court which has thus deprived it of its resources to protect it against execution while receivers handle and distribute those resources. Having possession of the *res* the court acquires jurisdiction of its owner.

A decree will therefore be entered in the usual form directing the receivers to ascertain the indebtedness and marshal the assets, prosecuting vigorously any collectible claims and to apply for further instructions from time to time; meanwhile they will retain possession of the property and will operate the same.

The controlling element in the operation of the property by the receivers will be the circumstance that such property is devoted to the public service. The traveling public are to be first considered; the service already performed by the roads must be kept up, and improved upon so far as may be. In the matter of improvements the receivers are fortunately relieved—at least in part—from the burden of devising improvements in the system by the existence of the Public Service Commission. That body is making a careful and exhaustive investigation into all such questions and may prescribe various changes in construction, equipment or operation devised and adapted to secure better service. These directions of the Public Service Commission will be carried out by the receivers so far as the income from operating the roads will permit: whether they should also undertake to borrow money in order to complete such changes is a question which can be determined subsequently when it is known just what those changes are.

The receipts from car service will be devoted first

to maintenance including all necessary repairs and replacements so as to avoid break-down at any point, and to operation, including not only employees, materials and supplies but also the adjustment of all claims arising by reason of such operation, and the obligations due to the state or municipality for percentage of gross receipts, taxes, etc., and the necessary expenses of receivership. Next in order are certain fixed charges in the nature of rentals agreed to be paid for the use of the roads comprising the system and interest falling due on various mortgage bonds of such roads which by the terms of the leases the New York City Railway Company has covenanted to pay. Failure to pay one of these items in the case of any component road will be a default of which the owners of that road can avail, if they choose to do so. And in that case they would be entitled to take such road out of the hands of the receivers, either for operation by themselves or for lease elsewhere. It would seem to be to the public interest, because of facility of transfer, that the roads which were being run by the City Railway when receivers were appointed should be operated as a unitary system; certainly the question is too important a one to be decided until investigation and experience shall have produced such reports from receivers as will give an accurate and complete view of the situation. For the present therefore the receivers will continue to pay such rentals and mortgage interest. This will not include the rental to the Third Avenue Railroad which will fall due the last of this month. A clause in the lease by that road provides that default in the payment of any instalment of that rental can-

not be availed of for six months. Long before that time sufficient information can be gathered (and made public) by the receivers to give such enlightenment as to the whole situation as will enable the court to deal understandingly with all questions as to payment of all these items of rent and mortgage interest. Before default is made in any case (except the one above referred to and the rental due October 15th to the Metropolitan Street Railway), petition will be filed setting forth all the facts bearing on the question and asking instructions, and a day will be fixed on which not only the parties to the suit, but all in any way interested (including the Public Service Commission as representative of the traveling public) will be heard as to the most equitable and wisest course to pursue. Until further order the receivers will also, if the other parties to such arrangements consent, carry out the arrangements by which the New York City Railway Company operates certain railroads not under lease, such as the Dry Dock, East Broadway and Battery R. R. and the Union Railway.

The receivers will forthwith employ an accountant of the highest standing to make an investigation of the books and papers, and also an expert engineer of like standing not heretofore connected with these roads, to make a thorough examination of their physical condition, so that receivers may be able to prepare an exhaustive report as to the liabilities and assets, condition of the property and cost of operation. This report will be prepared as soon as may be, consistently with a most thorough investigation. The sooner a comprehensive and accurate report as to the entire situa-

tion is made public on the records of this court, the sooner we shall be in a position to determine how best to dispose of the property and relieve the receivers and the court from the grevious burden of its conservation and operation.

As to some minor matters discussed on this hearing. Criticism has been made as to the phraseology of the decree appointing temporary receivers, which was modelled upon similar decrees in other receiverships in this court. The court had noted these in advance of this argument, and the decree making receivers permanent will require the approval of the court before payment of any rentals or the borrowing of any money. The criticism as to payment of salaries seems not well founded, a fair interpretation of the decree restricts it to salaries of those whom the receivers employ to do work for them, but a change of phraseology in the final decree will make that plain. It is suggested that there should be a provision for preference of damage claims for accidents resulting from operation of the road, or at least for putting them on the same footing as operating expenses. It is premature to decide that now. When the claims are in, a time will be fixed when due notice can be given to every one and the question discussed and decided.

Upon the argument Mr. Hawes requested the court to make an announcement as to claims for damages for personal injuries sustained in the operation of the road. The request is a proper one and will be complied with. All pending suits against the New York City Railway Company or the Metropolitan Street Railway Company which were begun before receivers were appointed may be

prosecuted to judgment, thus liquidating the claim. These claims are against the property of one or other of the corporations now held by receivers and will rank with all other claims of general creditors of such corporation, unless, upon the argument heretofore referred to, they may be accorded some general or qualified preference. It will be advisable for all such claimants whose suits are not yet tried to file a claim with the receivers stating that it is in litigation and when there has been a liquidation of the amount by verdict and judgment or by compromise approved by this court, they can file an amended claim. The master to whom all claims will be referred, will accept this liquidation unless some extremely exceptional circumstances call for some revision.

As to claims for damages resulting from some accident before receivers were appointed, but not yet in suit. These are claims against the property of defendant which may be filed with the receivers and may go to the master for adjustment. In any case, however, if plaintiff wishes a jury trial the decree in no way prevents his bringing suit against the company and liquidating the amount by judgment as if the suit had been begun before receivership. When liquidated it will rank with claims already in suit.

For damages resulting from the operation of the road by the receivers, the injured party may, of course, sue the receivers in any court he pleases without asking leave from any one."

In accordance with this opinion a decree was entered October 9, continuing the receivership pending the suit

(Exhibit K, pp. 283 *et seq.*). This decree was amended Oct. 15 (Exhibit L, pp. 288–289).

On October 9 the Morton Trust Company, the trustee under the Refunding Mortgage of the Metropolitan Street Railway Company, dated March 21, 1902, filed its bill against the Metropolitan Street Railway Company, New York City Railway Company, Joline and Robinson as Receivers of the New York City Railway Company and as Receivers of the Metropolitan Street Railway Company, The Pennsylvania Steel Company and The Degnon Contracting Company (Exhibit H, pp. 220 *et seq.*). It was alleged in the bill that over $16,000,000 of bonds were issued and outstanding under the mo gage (p. 265); that the mortgage provided that, in case a receiver should be appointed of the Metropolitan Company, the trustee under the mortgage should be entitled forthwith to exercise the right of entry conferred under the mortgage and should as matter of right be entitled to the appointment of a receiver of the mortgaged property (p. 271); that such receivers had been appointed (p. 269); that unless the earnings of the road were applied in accordance with the provisions of the mortgage, and the fixed charges of the railroads paid, and the interest on the bonds secured by the underlying mortgages on the various portions of the system leased to the New York City Railway Company, paid as the same accrued, there was danger of great and irremedial loss to the bondholders (p. 272); that the trustee had been requested by persons owning or representing a large number of the

bonds to enforce their rights under the mortgage (p. 273); that the property was then in the Court through its receivers (p. 273); the bill prayed for a decree that the right of entry existed, and that pending the suit a receiver be appointed of the mortgaged premises (pp. 273–274), and for further relief.

On the same day a decretal order was made in the new suit, appointing Joline and Robinson receivers of the mortgaged premises (Exhibit J., pp. 279 *et seq.*).

On October 25 a decree was entered adjudging that the New York City Railway Company was insolvent and that its assets should be marshaled and the nature and extent of the rights, liens, equities, and priorities of the several creditors should be ascertained and decreed by the court; that it should be referred to a master to take proof of claims and report to the court; that all claims should be presented to the master on or before November 30, 1907; and that the master should give public notice accordingly, the notice to contain a statement of the time and place of the first hearing before the special master (Exhibit M, pp. 289 *et seq.*).

In October Joseph Konrad, individually and as administrator of the estate of Paul Planovsky, presented a petition (Exhibit N2, pp. 294 *et seq.*) in which he alleged that as such administrator he recovered in June, 1907, a judgment for $8,538.94 against the New York City Railway Company; that the Railway Company appealed from said judgment to the Appellate Division of the Supreme Court of the State of New York for the First Department; that the appeal

was pending; that an undertaking to secure the payment of the judgment in case it was affirmed had been filed by the defendant with the American Surety Company as surety; that the action which resulted in the judgment was an action brought to recover damages for the death of the decedent; that the petitioner was individually a creditor of the defendant to an amount equal to at least two hundred dollars because of the illegal exaction at different times during the past four years of additional fares upon his transfer from one car to another; and that for several years he had suffered great inconvenience and danger because of insufficient transportation facilities. The petition further alleged that on the 24th of September a bill in equity was filed in the clerk's office of the Circuit Court by The Pennsylvania Steel Company and The Degnon Contracting Company against the New York City Railway Company, praying for an administration of the assets of the defendant and the appointment of a receiver; that neither of the complainants was a judgment-creditor; that the answer was filed in the clerk's office on the same day; that an order appointing receivers was made on the same day; that the bill was filed at the request of the defendant; that one of the concealed objects of the suit and of the motion for the receivership was to delay the trial of accident suits and to avoid the payment of claims that are the foundation of said suits; that the suit did not involve any controversy between the parties; that the parties complainant were improperly and collusively made and joined as complainants for

the purpose of creating a case cognizable under the Judiciary Acts; that there was pending in the State of New York an investigation by the Public Serice Commission for the City of New York into the affairs of the New York City Railway Company; that one of the purposes of the application for the receivership was to impede the further examination into the books and papers of the defendant by the Commission; that the defendant was largely indebted to the State and City of New York for the payment of taxes, and one of the reasons of the application for the appointment of receivers was in order to delay proceedings for the collection of taxes; that the application for the appointment of receivers was made also for stock-jobbing purposes and to promote speculation in the stock of the defendant and of other corporations affiliated therewith; that another reason for the appointment of receivers was to procure the continuance of the payment of large, excessive, and exorbitant salaries to the officers, superintendents, agents, and employees of the defendant; that the lease of the Metropolitan Street Railway Company to the New York City Railway Company was in conflict with the laws and the public policy of New York and of the United States; that the suit was instituted by collusion between the complainants and the defendant, and the court had no jurisdiction of the suit. The petition prayed that an order might be made dismissing the bill for fraud, collusion, and want of jurisdiction, and setting aside the order appointing receivers, or, in case the application was denied, that an order

might be made striking out certain provisions from the order appointing receivers and inserting in said order as a condition precedent to the appointment of the receivers, that all debts and liabilities for personal injuries, whether reduced to judgment or not, should have preference over all other claims upon the distribution of the assets of the defendant. The petition was subsequently amended so as to add the further prayer that the petitioner, individually and as administrator of the estate of Paul Planovsky, might be allowed to intervene in the suit of The Pennsylvania Steel Company and others against the New York City Railway Company, on behalf of himself individually and as such administrator as aforesaid and on behalf of all other judgment-creditors of the defendant who might come in and contribute to the defense of the suit (Exhibit N_3, p. 309).

Another petition was also presented: the petition of Daniel Gallagher and Francis S. Reisenberg, claiming to be creditors of the Metropolitan Street Railway Company because of personal injuries caused by the negligence of the Metropolitan Street Railway Company. This petition referred to the petition of Konrad and incorporated it. The prayer for relief was the same as in the petition of Konrad (Exhibit N_4, p. 310 *et seq.*).

In opposition to these applications to intervene affidavits were presented of John V. W. Reynders, the Vice-President of The Pennsylvania Steel Company (Exhibit N_5, pp. 314 *et seq.*), and of Nathaniel J. Haywood, the Secretary of The Degnon Contracting Company (Exhibit

N7, pp. 320 *et seq.*), the persons who had verified the original bill of complaint of those two companies against the New York City Railway Company, denying that the purpose of the suit or of the application for the receivership was to avoid any payments of claims or to delay proceedings, or to impede the Public Service Commission, or to promote speculation, or for stock-jobbing purposes, or for any wrongful purpose. Each admitted that the suit was brought in the United States Circuit Court for the purpose of having that court take jurisdiction, but denied that there was any impropriety or collusion or anything else wrongful in the conduct of either of the complainants. Each affidavit contained the following statement:

> "I allege that as non-residents of the State of New York the complainants had under the laws of the United States an absolute right to decide whether they would bring this suit in the courts of the United States or in the courts of the State of New York; I deny that the object of this suit is anything else than it appears to be on the face of the bill of complaint, viz.: the administration of the assets of the defendant in a proper court having jurisdiction thereof; at the time of the beginning of this suit I believed, and I now believe, that this court was the proper one in which in the interests of the complainants this suit should be instituted, and this court was therefore selected."

Each denied absolutely as to his company all charges of collusion or suppression of facts and all wrong-doing. A similar affidavit by the officer of the New York

City Railway Company who had verified the answer to the bill of complaint, was also presented (Exhibit N6, pp. 318–319).

The Court heard the counsel of the parties fully on all the questions raised by the petitions and affidavits and decided the same on November 6, and in the exercise of its jurisdiction and official discretion made orders denying such petitions (p. iii. of the Return). The order denying the petition of Joseph Konrad (Exhibit N) is found at pages 292 and 293. It recites that Konrad, individually and as administrator of Planovsky, had presented a petition for leave to intervene in the suit and orders that the prayer of the petition be denied. A similar order in similar language was made on the petition of Gallagher and Reisenberg (Exhibit O, pp. 323 and 324). It is the action of the Circuit Court in making these orders which denied leave to the petitioners to intervene and in not dismissing the bill filed by the complainants, The Pennsylvania Steel Company and The Degnon Contracting Company, and in not setting aside the order appointing receivers, and in not inserting in the order appointing receivers as a condition precedent to the appointing of the receivers a provision that all debts and liabilities of the defendants for personal injuries should have a preference over all other claims, that the petitioners seek to review by this proceeding.

On November 9 the court made a decree, adjudicating the insolvency of the Metropolitan Street Railway Company and adjudging that its assets should be marshaled and the nature and extent of the rights, liens, equities

and priorities of the several creditors should be ascertained; that it should be referred to a master to take proof of claims and report to the court; that all claims should be presented to the master on or before the 15th of January, 1908, and that the master should give public notice accordingly, the notice to contain a statement of the time and place of the first hearing before the special master (Exhibit P, pp. 324 *et seq.*).

On the same day a bill to foreclose the Refunding Mortgage of the Metropolitan Street Railway Company, dated March 21, 1902, was filed by the Morton Trust Company, the trustee under said mortgage (Exhibit R, pp. 331 *et seq.*). It made the two railway companies and the receivers and the complainants in the creditors' bill defendants. It alleged that by the mortgage the Metropolitan Company covenanted to observe and perform all the obligations, and pay and discharge all amounts payable, under any lease thereby mortgaged (p. 383); that a lease of the Third Avenue Railroad Company to the Metropolitan Company had been so mortgaged (pp. 383–384); that there became due and payable on October 13th to the Third Avenue Company an instalment of rent for the quarter ending on that day (p. 384); that the Metropolitan Company and the receivers of the New York City Railway Company and of the Metropolitan Company had failed to pay the rent (pp. 384–385); that such default was a default by the Metropolitan Company in the performance of the covenants of its mortgage (p. 385); that the Metropolitan Company and the New York Company were insolvent

(p. 386); that the Trust Company had been requested by holders of large numbers of bonds to institute proceedings for the foreclosure of the mortgage (p. 387); that the property mortgaged was in possession of the United States Circuit Court through its receivers (p. 388). It prayed for a foreclosure of the mortgage and the appointment of receivers. On November 19 a decree was entered in the foreclosure suit appointing Joline and Robinson receivers of the mortgaged premises and consolidating the two suits in which the Morton Trust Company was complainant (Exhibit S, pp. 426–429).

The receivers have now been operating the property for over two months, and have incurred many obligations incident to the operating of this large property. They filed a petition, Exhibit W (pp. 441 *et seq.*), showing that in April last the operating equipment of defendant was seriously impaired through the destruction by fire of its car-house, by which over 300 cars were lost, including a number of snow-sweepers; that on October 9 a fire occurred in a car-house of one of the subsidiary corporations, in which there were destroyed about 80 cars belonging to the defendant or its leased lines; that it was necessary that new equipment in place of that destroyed should be procured at once; that ten scraping cars, to be used for the purpose of removing snow and ice from the conduits of the electric system of the defendant were needed, it being impossible to operate the road satisfactorily without them; that it was essential to replace one of the car-houses that had

been destroyed, as at that point the principal repair and overhauling shops of the defendant were located, and its operations had been seriously crippled for some months because of the lack of adequate facilities for maintaining the equipment; that because of inability to inspect and repair the cars by reason of the loss of the car-houses, the defendant was obliged to keep cars in service which were in a defective condition; that only a third of the cars of the system had been equipped with vestibules for the protection of motormen from severe weather, and it was necessary to equip the remainder at once; that the receivers, upon their appointment, found in progress the instalment of a conduit electric system on First Avenue, the completion of which would involve an expenditure of approximately $275,000; that of this amount over $100,000 would be required to defray the expense of repaving the street, work which must be performed in order to restore the street to its original condition, irrespective of whether or not the track construction was completed; that, in order to avoid discomfort to passengers and wide-spread criticism, it was necessary, in order to supply the necessary heat for cars, that a new sub-station equipment should be installed; that the Department of Bridges of the City of New York demanded that the receivers should do certain work involving a change in the grade of certain streets, and had notified the receivers that unless the Department was assured that the work would be done promptly by the receivers the Department would undertake the work

and charge the expense to the company; that it was essential that in the various car-barns automatic sprinkler equipments should be installed with as little delay as possible; that until this was done the receivers would be unable to procure insurance for more than seventy-five per cent. of the amount which should be carried; and that various other expenditures were immediately necessary. The Court granted an order, Exhibit X (pp. 449, *et seq.*), authorizing the receivers to make the expenditures set forth in the petition.

It appears, then, that the two applications for writs of mandamus are made by persons who are not parties to the suit; that one application is made by a man who claims to be a creditor of the New York City Railway Company, individually, to the amount of $200, by reason of the alleged failure of that company to give him tickets entitling him to transfers at certain junction points without the payment of additional fares, and as administrator, by reason of a judgment for $8,538.94 which is secured on appeal by the bond of the American Surety Company; and the other by two men who claim to have suffered personal injuries, one in the year 1892 and the other in the year 1895. It appears further that these petitioners sought to intervene, not for the purpose of taking the benefit of the suit, but for the purpose of defeating it. It appears also that in the court below the petitioners made charges that the creditors' bill was filed to delay creditors, and for stock jobbing and other wrongful

purposes, and that those charges were denied under oath. It appears also that they presented to the court no evidence that the defendant in the original bill was not, as it was alleged to be, a citizen of New York; no evidence that the complainants were not, as they were alleged to be, citizens respectively of Pennsylvania and New Jersey; no evidence that the claims of complainants were not, as they were alleged to be, for amounts far in excess of the jurisdictional amounts; no evidence that the claims were not, as they were alleged to be, for supplies furnished, and work done by the complainants respectively; and no evidence that there was any transfer of any claim, or change of residence, or anything of the sort to make a case cognizable by the United States Courts. The only argument, therefore, that was left to the petitioners in the Circuit Court was that it was without jurisdiction because the complainants in the creditors' bill were not judgment creditors with executions issued and returned unsatisfied, and because it was evident that the complainants and defendants arranged that the suit should be brought in the Federal Courts and the averments of the bill should be admitted by the answer. It is clear from the action of the court below and the opinions rendered by it that it believed it had jurisdiction of the cause and the parties, and that it did not "appear to the satisfaction of said court" that there was no controversy properly within its jurisdiction nor that the parties to the suit were improperly or collusively made or joined as plaintiffs or defendants for the purpose of creating

a case cognizable by the Circuit Court of the United States.

It is plain this proceeding is simply an attempt to review the judicial action and discretion of the Circuit Court. We respectfully submit, not only that this can not be done by mandamus, but that if this court had been the court before whom the questions raised in the court below had originally come, this court would have entered the same orders as were entered by the court below. If the court below was without jurisdiction because on the facts before it there was no controversy or there was collusion, then the Circuit Courts of the United States have been without jurisdiction in the foreclosure of nearly every railroad system, national, state or city, that has been carried through in these courts in the past quarter of a century. It was without jurisdiction in the proceedings in which receivers were appointed of the Union Pacific Railroad, the Northern Pacific Railroad, the Richmond & Danville Railroad, the Ogdensburg & Lake Champlain Railroad, the Louisville, Evansville & St. Louis Railroad, the Atchison, Topeka & Santa Fe Railroad, the Wabash Railroad, and countless others; for in every one of those cases there were some, or all, of the facts which the petitioners now claim justify the writ they ask for. In every one of them, whether the suit was begun by a general creditor, a judgment creditor, a stockholder, or the trustee of a mortgage, the defendants filed an answer admitting the allegations of

the bill within a few minutes or hours after the bill was filed and consented to the appointment of the receivers.

Thus taking the first records that are at hand in our office we find that the bill under which the Northern Pacific Railroad Company was placed in the hands of a receiver in 1893, and the answer of the defendant admitting the allegations of the bill and joining in the prayer for a receiver were filed on the 15th of August of that year, and the decree appointing receivers was filed on the same day at twenty-five minutes past twelve in the afternoon; and that the bill under which the Louisville, Evansville and St. Louis Consolidated Railroad Company was placed in the hands of receivers was verified on the 3d of January, 1894, and the answer admitting the allegations of the bill and joining in the prayer for a receiver was verified on the same day and that both were presented at the same time on the 4th of January and that a receiver was appointed on that day.

If the contentions of the petitioners in this case are correct, any creditor can to-day intervene in the most important steam railroad receiverships now pending in the United States courts, those of the Cincinnati, Hamilton & Dayton Railroad and of the Pere Marquette Railroad, and get the receiverships vacated and the bills dismissed. In the case of the Pere Marquette Company the complainant was a general creditor and the bill and the answer admitting the allegations of the bill and consenting to the receivership were presented to the judge in Cincinnati, and the order appointing receivers

signed by him before the bill and answer were actually lodged in the clerk's office at Grand Rapids (*Horn v. Pere Marquette R. Co.*, 151 Fed., 626, 634).

I.

The petitioners are not entitled to writs of mandamus.

(*a*)

The petitioners had no standing in the Circuit Court to ask that the bill be dismissed or the decree appointing receivers be vacated, because they were not parties to the suit. They were and are strangers to the suit (*Railway Co. v. Alling*, 99 U. S., 463). If the Circuit Court had deemed it proper to allow them to intervene it would have entered an order allowing them to intervene and to become parties to the suit. That order would not have dismissed the bill or vacated any orders in the suit. Motions to dismiss the bill or to vacate orders could only have been made after the petitioners had become parties.

Counsel for the petitioners in his brief lays stress upon the fact that the petitioners have no right to appeal. He says (p. 7 of his brief) that interveners "never have a right to appeal from an order denying their right to intervene and defend a suit."

The fact that the petitioners have no appeal is a conclusive reason why they have no right to the writ of mandamus: for the only reason why they have no appeal is that the allowance of the petitions to intervene

was entirely discretionary with the court below, and it is unquestionable that mandamus will not lie to control the discretion of that court.

In *Ex parte Railway Company*, 101 U. S. 711, Mr. Justice Harlan, speaking for the court, said:

> "We recognize, in its fullest extent, the power of this court, by mandamus, to enforce prompt compliance with its mandates; but it is not consistent with the principles and usages of law that we should, in that summary mode, revise the action of inferior courts, as to any matters about which they must or may exercise judicial discretion. 'The writ has never been extended so far, nor ever used to control the discretion and judgment of an inferior court of record acting within the scope of its judicial authority.' *Ex parte Taylor*, 14 How., 3; *Ex parte Many*, *id.* 24; *United States v. Lawrence*, 3 Dall., 42; *Life and Fire Insurance Company of New York v. Wilson's Heirs*, 8 Pet., 291; *Ex parte Hoyt*, 13 *id.*, 279; *Ex parte Myra Clarke Whitney*, *id.*, 404; *Ex parte Newman*, 14 Wall., 152."

If the orders of the court below were not in the discretion of the court, but were final adjudications in that they denied relief which could be obtained only by an intervention in the pending cause, then the petitioners are wrong in their belief that they have no appeal. The distinction between the two kinds of intervention is stated in *United States v. Phillips*, 107 Fed., 824, by the Court of Appeals for the Eighth Circuit. The court says:

> "This court has held that there are two kinds of interventions. To the one class belong those

cases in which the court or chancellor to whom the application is made is not bound to permit a third party to intervene, and load the case with collateral issues, and in which the allowance of an intervention is entirely discretionary with the chancellor. To the other class of cases belong those in which the right to intervene is absolute, resting, as it does, upon the grounds of necessity, and the inability of the intervener to obtain such relief as he is entitled to by any other means than an intervention. *Minot v. Mastin*, 95 Fed. 734, 739; *Credits Commutation Co. v. United States*, 91 Fed. 570. When a chancellor denies leave to intervene in a case belonging to the first class, no appeal lies because the action of the chancellor is discretionary, and because the chancellor's action in denying leave to intervene is not a final adjudication upon the intervener's rights. But, when a chancellor denies the right to intervene in a case belonging to the second class, an appeal lies, because the chancellor's action was not discretionary, and because such action was a final adjudication, in that it denied him relief which he could obtain only by an intervention in the pending cause."

The same distinction was stated by this court in *Credits Commutation Co. v. U. S.*, 177 U. S., 311.

Counsel for the petitioners treats their petitions, and properly, as petitions for leave to intervene and to defend the suit. Of course, no one can defend a suit but a party defendant. Counsel is right in saying that it is well settled that an order denying a petition to be allowed to intervene and become a party is not appealable. It is also settled by the authorities counsel cites that the

refusal to allow the petitioners to intervene as parties cannot be controlled by mandamus.

In *Ex parte Cutting*, 94 U. S. 14, the Court says (page 21):

> "From this it is apparent that if one wishes to intervene and become a party to a suit in which he is interested, he must not only petition the court to that effect but his petition must be granted. * * *
>
> "Upon this state of facts it is impossible to say that the petitioners or any of them have established their right to appeal as actual parties to the suit before the decree.
>
> "No appeal lies from the order of October 3, refusing them leave to intervene and become parties, for that was only a motion in the case and not an independent suit in equity appealable here.
>
> "Neither can these petitioners appeal as stockholders. Only parties or those who represent them can appeal. The stockholders do not represent the corporation, but for some purposes the corporation represents them. They are sometimes admitted as parties to a suit for the purpose of protecting their own interests in the corporation against unfounded and illegal claims against it; but this 'remedy is an extreme one and should be admitted by the court not without hesitation and caution.' *Bronson v. La Crosse Railroad Co.*, 2 Wall., 302. It is always addressed to the sound judicial discretion of the court. *That we cannot control by mandamus.*"

See also *Toledo, St. L. & K. C. R. Co. v. Continental Trust Co.*, 95 Fed. 497, 536; *Jones & Laughlins, Ltd. v. Sands*, 79 Fed. 913.

(*b*)

The denial of the petitioners to intervene is not a final adjudication denying petitioners relief which they can obtain only by an intervention in the pending cause.

So far as they desire to claim priority to other creditors they will be given an opportunity to do so before the master who has been appointed to receive claims against the New York City Railway Company and the Metropolitan Street Railway Company. There are thousands of other persons who have claims against the railway companies for personal injuries; there are numbers of creditors who have furnished supplies and material to keep the defendants "going concerns"; there will be contests between these creditors and other creditors for priority, and contests between all of them and the bondholders secured by mortgages. In some courts claims for personal injuries have been allowed a preference. In most courts they have not. In many courts a preference has been allowed in the case of claims for supplies furnished two or three years before the receivership; while in other courts it has been allowed only where the claims accrued within a short period before the appointment of the receivers. When the claims are all presented to the master, the claimants will range themselves into classes, those classes will choose committees to represent them, and those committees will present the arguments of the various classes of creditors to be allowed priorities. On the hearing upon the master's report the court will doubtless be glad to allow those committees to intervene to protect

the interests of those they represent and also to receive assistance from any lawyers who desire to be heard or present briefs. The correct procedure is suggested by Mr. Justice BRADLEY in the case of *Forbes v. Memphis, El Paso and Pacific Railway*, 2 Woods, 323, at page 324, where he said:

> "It is true that the complainants filed the bill in this case in behalf of themselves and of all others being stockholders, creditors or bondholders of the corporation defendant who might desire or be entitled to intervene, *but it was never contemplated, nor is it the proper practice, that the parties embraced in that category should intervene to set aside the proceedings or to interpose obstacles to the suit.* The complainants, by suing as representatives, opened the door to all other parties named to come in and take the benefit of the proceedings and the decree, not to oppose and nullify them. * * * *Rival creditors, by proceedings before a Master, may control the priority of their respective liens, and creditors or stockholders may contest the validity of the claims of other creditors and stockholders, but all in subordination to the general object and purpose of the suit to obtain an administration of the company's assets and property.*"

Counsel for petitioners says (p. 8 of his brief):

> "By agreement between their debtor and two alleged creditors of the New York City Railway Company, whose claims they (the petitioners) dispute but are not allowed to contest, they have been enjoined from asserting their own rights in any court."

This is a mistake, if it means anything more than that petitioners are enjoined from levying upon the property in the hands of the receivers. The only injunction against the petitioners is contained in this clause of the order:

> "and the defendant * * * and all other persons claiming to act by, through, or under the defendant, and all other persons whosoever, are hereby enjoined from interfering in any way whatever with the possession or management of any part of the property over which the receivers are hereby appointed, or interfering in any way to prevent the discharge of their duties or their operating the same."

There is no injunction restraining the petitioners from proceeding to judgment.

Counsel says (p. 7 of his brief): "They have been denied a hearing upon a motion to dissolve the injunction."

The order appointing receivers, September 24, 1907, contained this clause:

> "And it is further ordered that the parties hereto show cause before this court at the United States Postoffice Building in the City of New York on the 7th day of October, 1907, why the said receivership should not be continued during the pendency of this suit and upon the hearing thereupon any other creditor of the defendant or other party in interest may be heard."

The purpose of this portion of the order is that, if the defendant is not insolvent, if the complainants are

not really creditors, if there really is not the necessary diversity of citizenship, or the jurisdictional amount is not involved, the court may be informed and of its own motion vacate the receivership and dismiss the bill.

If the court vacated the receivership it would of course dissolve the injunction.

Counsel for petitioners says (p. 7 of his brief):

> "They (the petitioners) are denied a hearing upon consent orders for the depletion of those assets by expenditures of millions of dollars and the creation of liens superior to theirs by the issue of creditor's certificates."

They are denied a hearing only in the sense that anyone who is interested as a creditor or stockholder or otherwise, who is not a party, is denied a hearing.

In that sense, unless every such person is made a party, some one will be denied such a hearing. In a suit brought by a trustee of a mortgage against the defendant to foreclose the mortgage, the petitioners would be "denied a hearing" unless they were made parties to the foreclosure suit. But manifestly they would not be allowed to become parties to the foreclosure suit on such an allegation.

In the present suit, or in such a foreclosure suit, the Circuit Judge would undoubtedly allow him or some other creditor to intervene, though not necessarily as a party defendant, if any evidence were presented that the Judge was deprived of the benefit "of any advice except from those who are interested in deceiving him;"

although a more effectual remedy, and one that the Circuit Judge would undoubtedly adopt, would be to remove the receivers and appoint new ones who would not be interested "in deceiving him." Receivers are officers of the Court—not the representatives of parties. It is on their information and advice that the Court acts, not on that of interested parties.

Counsel says (p. 8 of his brief) that the petitioners will be estopped from objecting to the validity of receivers' certificates if any are issued, unless they are in a position to move to set them aside as soon as they hear of an intention to issue them. If that is a reason why they should be admitted as parties, it follows that all other creditors claiming a preference, materialmen and the like, and in fact all other creditors whether they claim a preference or not, should be permitted to intervene, as otherwise the receivers' certificates will be good as against them.

The answer to all this is that there must be some limit to the number of parties in a case, and something must be trusted to the receivers and the court itself, if not to the complainants and the defendants. There is very much greater likelihood of danger to the administration of an insolvent estate from a multitude of parties and consequent delay, litigation, and expense than there is from the possible frauds or carelessness of receivers acting under the supervision of a competent court.

It is a sufficient ground, therefore, for denying the writs asked for that the orders of the Circuit Court

denying the petitioners leave to intervene were discretionary orders.

But if the orders were not discretionary and there were no remedy by appeal, mandamus should still be refused.

(*c*)

The power of the Supreme Court of the United States to issue writs of prohibition or mandamus is found in Revised Statutes, section 688.

> "The Supreme Court shall have power to issue writs of prohibition in the district courts, when proceeding as courts of admiralty and maritime jurisdiction; and writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed under the authority of the United States, or to persons holding office under the authority of the United States, where a state, or an ambassador, or other public minister, or a consul or vice-consul is a party."

Revised Statutes, section 716, which is sometimes referred to in the cases on mandamus, provides that:

> "The Supreme Court and the circuit and district courts shall have power to issue writs of *scire facias*. They shall also have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law."

The general principles governing the issue of the writ may be stated as follows:

The writ will issue from this court to a subordinate court of the United States:

(*a*) When the lower court has jurisdiction of a case but refuses to hear and decide it (*Ex parte Schollenberger*, 96 U. S., 369; *In re Connaway*, 178 U. S., 421), unless its right to issue the writ in such a case has been expressly or impliedly taken away by statute (*In re Pennsylvania Co.*, 137 U. S., 451).

The mandate will be to take jurisdiction and to hear and decide.

(*b*) When the lower court, having heard the case, refuses to enter a judgment or decree, or refuses to perform some purely ministerial act like signing a bill of exceptions (*Life and Fire Ins. Co. v. Wilson's Heirs*, 8 Peters, 291).

The mandate will be to enter the judgment or decree that to the lower court seems proper, or to perform the ministerial act.

(*c*) When the lower court, after an appeal to this court, has through misconstruction, mistake or otherwise failed to execute the directions of this court according to what appears to this court to be the manifest meaning of such directions (*Gaines v. Rugg*, 148 U. S., 228; *In re Potts*, 166 U. S., 263).

The mandate will be to execute those directions as construed by this court.

(*d*) When the lower court on the face of the record has no power to act (*Ex parte Bradley*, 7 Wall, 364; *Virginia v. Rives*, 100 U. S., 313; *Virginia v. Paul*, 148

U. S., 107; *Kentucky v. Powers*, 201 U. S., 1; *Ex parte Wisner*, 203 U. S., 449).

The mandate will be to cease to act and to turn over to the proper court or person whatever it has taken possession of in an attempt to exercise jurisdiction.

The writ will not issue

(*a*) To perform the office of an appeal or writ of error, even if no appeal or writ of error is allowed by law (*Ex parte Newman*, 14 Wall, 152; *American Construction Company v. Jacksonville Railway*, 148 U. S., 372; *In re Rice*, 155 U. S., 396; *In re Atlantic City Railway*, 164 U. S., 633; *In re Blake*, 175 U. S., 114).

(*b*) Where there is another adequate remedy (*Bank of Columbia v. Sweeney*, 1 Pet. 567; *Ex parte Virginia Commissioners*, 112 U. S., 177; *Conn. Mutual Life Ins. Co.*, petitioner, 131 U. S., Appendix CLXXX).

(*c*) To compel the court below to decide a matter in a particular way (*In re Parsons*, 150 U. S., 150; *In re Rice*, 155 U. S., 396; *In re Pollitz*, 206 U. S., 323).

(*d*) To review judicial action had in the exercise of legitimate jurisdiction (*Ex parte Railway Company*, 101 U. S., 711; *Ex parte Burtis*, 103 U. S., 238; *In re Streep*, 156 U. S., 207).

The distinction between cases where the court will grant mandamus and where it will not, when the question is whether or not the court had jurisdiction, is clearly shown by comparing the decisions in *Ex parte Wisner*, 203 U. S. 449, and *In re Pollitz*, 206 U. S., 323, both removal cases.

In *Ex parte Wisner*, on the face of the record it appeared that neither of the parties was a resident of the State of Missouri, in which State the suit was brought: the United States Circuit Court had no power to take original jurisdiction of such a case, and therefore it had no power to take jurisdiction of it on a petition seeking to remove it from the State Court.

No judicial action or decision upon the part of the lower court was reviewed or reversed, or even considered. The case was not directed to be remanded on the ground of erroneous judicial decision or action, but rather on the ground of the impossibility of any judicial action or decision at all being taken or made by the lower Federal Court, for the reason that, there being apparent from the record an utter lack of power to take jurisdiction, no action *could* be validly taken by the Federal Court. The removal proceedings on their face were defective.

The Pollitz case, one of several defendants, a non-resident, removed to the United States Circuit Court on the ground, alleged in his petition, that the removing defendant was the only defendant whose presence upon the record was necessary for the complete determination of a controversy solely between defendant and the plaintiff. If this allegation were true, the United States Court not only had power, but it was its duty, to take jurisdiction. To answer the question whether or not this contention of the removing defendant was true—whether yes or no—was to exercise jurisdiction. The entry of the order containing this answer was a judicial

act. To pass upon its correctness or incorrectness by granting a mandamus would be to use the writ to annul or reverse a judicial act of an inferior tribunal within the scope of its jurisdiction.

The general principles upon which this court acts in granting or refusing a mandamus to an inferior court are stated in *Ex parte Newman*, 14 Wall., 152. The Court said:

> "Applications for a mandamus to a subordinate court are warranted by the principles and usages of law in cases where the subordinate court, having jurisdiction of a case, refuses to hear and decide the controversy, or where such a court, having heard the cause, refuses to render judgment or enter a decree in the case, but the principles and usages of law do not warrant the use of the writ to re-examine a judgment or decree of a subordinate court in any case, nor will the writ be issued to direct what judgment or decree such a court shall render in any pending case, nor will the writ be issued, in any case, if the party aggrieved may have a remedy by writ of error or appeal, as the only office of the writ when issued to a subordinate court is to direct the performance of a ministerial act or to command the court to act in a case where the court has jurisdiction and refuses to act, but the supervisory court will never prescribe what the decision of the subordinate court shall be, nor will the supervisory court interfere in any way to control the judgment or discretion of the subordinate court in disposing of the controversy (p. 165). * * * Superior tribunals may by mandamus command an inferior

court to perform a legal duty where there is no other remedy, and the rule applies to judicial as well as to ministerial acts, but it does not apply at all to a judicial act to correct an error, as where the act has been erroneously performed. If the duty is unperformed, and it be judicial in its character, the mandate will be to the judge, directing him to exercise his judicial discretion or judgment, without any direction as to the manner in which it shall be done, or, if it be ministerial, the mandamus will direct the specific act to be performed (p. 169).

"Power is given to this court by the Judiciary Act, under a writ of error, or appeal, to affirm or reverse the judgment or decree of the Circuit Court, and in certain cases to render such judgment or decree as the Circuit Court should have rendered or passed, but no such power is given under a writ of mandamus, nor is it competent for the superior tribunal, under such a writ, to re-examine the judgment or decree of the subordinate court. Such a writ cannot perform the functions of an appeal or writ of error, as the superior court will not, in any case, direct the judge of the subordinate court what judgment or decree to enter in the case, as the writ does not vest in the superior court any power to give any such direction or to interfere in any manner with the judicial discretion and judgment of the subordinate court."

An examination of all cases in which this Court has been asked to grant a writ of mandamus shows that the writ has been used almost entirely to compel a subordinate court to exercise jurisdiction which it refuses to exercise, or to allow an appeal to a party entitled

thereto. . In both cases the purpose of the writ is to enlarge the jurisdiction of the subordinate court; not to take it away. The only cases that can be found in this Court where mandamus has issued on the theory that the subordinate court was exercising jurisdiction that it had no power to exercise are *Virginia v. Rives*, 100 U. S. 313; *Virginia v. Paul*, 148 U. S. 107; *Kentucky v. Powers*, 201 U. S. 1; *Ex parte Wisner*, 203 U. S. 449; *Ex parte Bradley*, 7 Wall. 364.

Virginia v. Rives, *Virginia v. Paul*, *Kentucky v. Powers* and *Ex parte Wisner* are all cases where the original proceedings were in the State Court, and the petition for removal showed that the conditions required by the Removal Act in order to permit the removal of the case did not exist; they were all cases of want of power in the United States Court to act. They are all put upon the ground that the record in each case showed that the case was one that could not be removed to the United States Court. As an illustration, we take the case of *Virginia v. Paul.*

That case arose upon a petition by the Commonwealth of Virginia to the Supreme Court for a writ of mandamus to the Honorable John Paul, District Judge of the United States for the Western District of Virginia, holding Circuit Court, to command him to remand to the County Court of Smyth County, Virginia, an indictment against Joseph H. Carrico for the murder of James N. Nelson, found by the Grand Jury of that County and of which the Circuit Court of the United States had assumed jurisdiction under what purported

to be a petition for removal; also to command him to restore the body of Carrico to the jailor of Smyth County from whose custody he had been taken upon a writ of *habeas corpus* issued by Judge Paul.

The petition was based upon section 643 of the Revised Statutes authorizing the removal into the Circuit Court of the United States for trial of "any civil suit or criminal prosecution commenced in any court of a state against any officer appointed under or acting by authority of any revenue law of the United States, now or hereafter enacted, or against any person acting under or by authority of any such officer, on account of any act done under color of his office or of any such law, or on account of any right, title or authority claimed by such officer or other person under any such law."

The petition alleged that Kirk, Justice of the Peace of Smyth County, on that day issued his warrant to the constable to arrest the petitioner and bring him before the Justice on a charge of the murder of Nelson, and that the petitioner had been arrested by the constable on that warrant and was now confined in the County jail awaiting a trial before such Justice on the charge of murder.

The petition for removal did not, therefore, seek to transfer the indictment from a State Court of competent jurisdiction, for which authority is given by Sec. 643, but from a Justice whose only authority was to commit the accused to await action by the Grand Jury, for which no authority is given by any statute.

In granting the writ of *mandamus* the Supreme Court, speaking by Mr. Justice GRAY, says (p. 123):

"A stronger case for issuing a writ of mandamus can hardly be imagined. The writ may be directed to the judge who has unlawfully assumed jurisdiction of the prosecution; *and no previous motion to him to remand the case was necessary.* The case is governed in every particular by *Virginia v. Rives*, 100 U. S. 313, 316, 323, 324."

In *Ex parte Bradley*, 7 Wall., 364, application on behalf of Bradley was made to the Supreme Court for a writ of mandamus, directed to the Supreme Court of the District of Columbia, to restore him to the office of attorney and counsellor in said court, from which he alleged that he had been wrongfully removed by it. It appeared that the Supreme Court of the District had issued a rule against Bradley reciting certain offensive language which, it alleged, he had used at the previous June Term of the Criminal Court, for which language the Criminal Court had entered a judgment ordering Bradley's name stricken from the rolls. The rule of the Supreme Court of the District of Columbia ordered that Bradley show cause why he should not be punished for contempt of that court.

This court held that, as the Supreme Court of the District of Columbia was a different court from the Criminal Court, the former court had no power to disbar an attorney for a contempt of the latter.

In discussing the functions of the writ of mandamus, Mr. Justice NELSON, in delivering the opinion of the Court, says (p. 377):

"The ground of our decision upon this branch

of the case is, that the Court below had no jurisdiction to disbar the relator for a contempt committed before another court. The contrary must be maintained before this order can be upheld and the writ of mandamus denied. No amount of judicial discretion of a court can supply a defect or want of jurisdiction in the case. The subject-matter is not before it; the proceeding is *coram non judice* and void."

"The subject-matter was not before the court" in any one of the five cases that we have named; and no other case can be found in the reports where this Court issued the writ on the ground that a subordinate court had attempted to exercise jurisdiction unlawfully. In the present case the subject-matter was before the court; there was a real difference of citizenship; there were debts of more than the jurisdictional amounts due from the defendant to the complainants; there was a real equitable subject-matter—the administration of the assets of an insolvent corporation.

The case of *Brown v. Lake Superior Iron Co.*, 134 U. S., 530, is a conclusive authority that "the subject-matter was before the court."

The facts in this case, as stated by the court, were as follows: One judgment creditor upon whose judgment no execution had been issued or returned, and two creditors holding notes not then due filed a bill against a corporation in the United States Circuit Court, praying for the appointment of a receiver to take charge of the property and assets of the corporation and for such other and further relief as was proper. On the day

the bill was filed the defendant entered its appearance and accepted service of notice of motion for the appointment of a receiver, and a receiver was thereupon immediately appointed. On the next day subpoena was served on the defendant. Subsequently a supplemental bill was filed, making other parties defendants, and thereafter an order *pro confesso* was entered against all the defendants in the original and supplemental bills.

Some months later the defendant corporation confessed judgments to several creditors, paid into the registry of the court money enough to pay off the judgment in favor of the complainant creditor, and then filed two pleas, one setting forth the fact of payment and *the other that the original and supplemental bills disclosed that the complainants had a plain, adequate and complete remedy at law*, and that, therefore, the court, sitting as a court of equity, had no jurisdiction and praying a dismissal of the bills. It also filed a motion to discharge the receiver. The motion was overruled and the court proceeded to a decree of administration, sale and distribution. From this decree the defendant appealed, its principal contention in this court being that the Circuit Court had no jurisdiction whatever over the subject-matter of the cause, it appearing upon the face of the bills, original and supplemental, that the complainant had a plain, adequate and complete remedy at law.

The court said, speaking by Mr. Justice Brewer, p. 534:

> "Obviously the proceedings had were with its (defendant's) consent. Immediately on filing the

bill it entered its appearance; and the same day a receiver was appointed without, objection on its part. It suffered the bills to be taken *pro confesso.*"

The court further said that, conceding that the bill was defective, that a demurrer must have been sustained and that the appellant, if it had so chosen to act in the first instance, could have defended its possession and defeated the action, still the decree of the Circuit Court must be sustained, quoting the statement in 1 Dan. Ch. Pr. (4th Am. Ed.), 550, that "if a defendant in a suit in equity answers and submits to the jurisdiction of the court, it is too late for him to object that the plaintiff has a plain and adequate remedy at law," provided, "it is competent for the court to grant the relief sought and that it has jurisdiction of the subject-matter."

The case is a conclusive authority against the granting of a mandamus in the case at bar. Everything that in the case at bar is claimed to show that the decree is void for lack of jurisdiction—whether because the complainants were simple contract creditors, or because of alleged collusion, or because there was no controversy—the fact that the complainants had not exhausted their legal remedies, that defendant consented to the appointment of a receiver, that the filing of the bill, the appearance of the defendant and the appointment of the receiver were all done at the same time, appears in the *Brown* case. If the court was without jurisdiction in the sense in which that term is used in mandamus proceedings, or if the case came within section 5 of the Act of 1875, and there was collusion within the meaning

of that act, then, according to the claim of petitioners, it was the duty of the court, whenever these facts were shown to its satisfaction, to dismiss the bill. As is said by Daniell in the extract referred to by the court in the *Brown* case, the rule that a defendant by answering and submitting to the jurisdiction of the court loses his right to make objection is subject to the qualification that it is competent for the court to grant the relief sought and that it has jurisdiction of the subject-matter. If the court has not jurisdiction of the subject-matter, then no *laches*, no acquiescence can give it jurisdiction. Therefore the Brown case is a distinct authority to the effect that notwithstanding every fact admitted, or that can be inferred from the record in the case at bar, the Circuit Court had jurisdiction. If on the facts in the *Brown* case the court would not on appeal hold the Circuit Court was without jurisdiction, *a fortiori* will it not so hold on a petition for a writ of mandamus.

Petitioners have asked in the alternative for a writ of mandamus or a writ of prohibition. If it is proper to issue either writ in this case, it would seem to be mandamus. The writ of prohibition would seem to be confined to proceedings in the District Court, as courts of admiralty and maritime jurisdiction. If, however, the writ is not so confined, the arguments which we have made against the issuing of the writ of mandamus apply equally against the issuing of a writ of prohibition.

II.

The Circuit Court is not without jurisdiction merely because the complainants are simple contract creditors.

The claim that the decree appointing a receiver is void because made on the application of a simple contract creditor is without merit. While it is true that a court of equity on the application of a simple contract creditor will not appoint a receiver if objection is made by the defendant that the creditor has not obtained a judgment on which execution has been issued and returned unsatisfied, it is equally true that the defense is one which may be waived either expressly or by failure to take the objection and that if it is waived the court has jurisdiction of the parties and its decree appointing the receiver is valid.

In *Hollins v. Brierfield Coal & Iron Co.*, 150 U. S., 371, this court said:

> "Defenses existing in equity suits may be waived, just as they may in law actions, and when waived, the cases stand as though the objection never existed. *Given a suit in which there is jurisdiction of the parties, in a matter within the general scope of the jurisdiction of courts of equity, and a decree rendered will be binding although it may be apparent that defenses existed which, if presented, would have resulted in a decree of dismissal.* * * * *The administration of the assets of an insolvent corporation is within the functions of a court of equity, and the parties being before the court, it has power to proceed with such administration.* If there was a defense existing to the

bills as framed, and objection to the right of these plaintiffs to proceed on the ground that their legal remedies had not been exhausted, it was a defense and objection which must be made *in limine*, and does not of itself oust the court of jurisdiction. This doctrine has been recognized not merely in the cases cited, but also in those of *Reynes v. Dumont*, 130 U. S. 354; *Kilbourn v. Sunderland*, 130 U. S. 505; *Brown v. Lake Superior Iron Co.*, 134 U. S. 530" (p. 380).

This case has been cited on this point by the inferior Federal courts a great many times (*Western Electric Co. v. Reedy*, 66 Fed. 163, 164; *Park v. New York, Lake Erie & Western R. R. Co.*, 70 Fed. 641, 642; *Waite v. O'Neill*, 72 Fed. 348, 353; *Ross-Meehan Brake Shoe F. Co. v. Southern Malleable Iron Co.*, 72 Fed. 957, 959; *Temple v. Glasgow*, 80 Fed. Rep. 441, 444; *Schoolfield v. Rhodes*, 82 Fed. 153, 157; *Enos v. N. Y. & O. R. Co.*, 103 Fed. 47).

In the very recent case of *Horn v. Pere Marquette R. R. Co.*, 151 Fed., 626, the case under which the Pere Marquette Railroad Co. was placed in the hands of a Receiver, the Court said (p. 633):

"Next it is said that the bill under which the receiver was appointed was filed by a single unsecured creditor, who had no judgment, and who claimed no lien. But the defendant debtor appeared, and, by a sworn answer, confessed the debt and its utter insolvency, and joined in the prayer for the appointment of a receiver. The objection, if tenable in view of the confession of the debt and of insol-

vency, was one which, in a case where the court had jurisdiction of the parties and is of general equitable cognizance, may be waived 'and, when waived, stands as though no such objection ever existed.' * * * *Hollins v. Brierfield Coal Co.*, 150 U. S., 371, 380. In the case last cited the court expressly held that such an objection must be made in *limine* or it is waived, citing *Reynes v. Dumont*, 130 U. S., 354, and other cases."

See also *Brown v. Lake Superior Iron Company*, 134 U. S., 530, referred to at length *supra* pp. 51–54. There the point that the complainant creditors had an adequate remedy at law was taken by plea.

The doctrine laid down in the statement we have quoted from *Hollins v. Brierfield Coal Co.*, is no novel one. It is the recognized doctrine in regard to equitable jurisdiction approved by the text books and the decisions of the different State courts. Thus, in *1 Daniel's Chancery Practice*, 5th Ed., p. 555, it is said:

"In the meantime, it may be observed, that if the objection on the ground of jurisdiction is not taken in proper time, namely, either by demurrer or plea, before the defendant enters into his defense at large, the court having the general jurisdiction will exercise it, unless in cases where no circumstances whatever can give the court jurisdiction, as in the case before put, of a bill of appeal and review from a decree in a county palatine; in which case the court cannot entertain the suit, even though the defendant does not object to its deciding on the subject."

In *Town of Mentz* v. *Cook*, 108 N. Y. 504, the Court of Appeals said at p. 508:

> "It appears to be settled by a very general concurrence of authority that a defendant cannot, when sued in equity, avail himself of the defense that an adequate remedy at law exists, unless he pleads that defense in his answer. (*Grandin* v. *LeRoy*, 2 Paige, 509; *LeRoy* v. *Platt*, 4 id. 77; *Truscott* v. *King*, 6. N. Y. 147; *Cox* v. *James*, 45 id. 557; *Green* v. *Milbank*, 3 Abb. N. C. 138; *Pam* v. *Vilmer*, 54 How. 235.) The rule proceeds upon the basis that parties may, by their mutual assent, litigate their differences in a court of equity, where the assent of the defendant, if withheld, might induce the court to refrain from the exercise of its jurisdiction. That jurisdiction existing over the general subject, the question of its exercise in the given case cannot be raised, unless the answer raises it. *Much more should that be true, where the answer explicitly admits an allegation of the complaint that the plaintiff has no adequate remedy at law.*"

See also *Searight v. Carlisle Deposit Bank*, 162 Pa. St., 504; *Peoples' National Bank of Pittsburg v. Loeffert*, 184 Pa. St., 164; *Pennsylvania R. R. Co. v. Bogert*, 209 Pa. St., 589; *Monumental Mut. Life Ins. Co. v. Wilkinson*, 100 Md., 31; *Clark v. Flint*, 22 Pickering, 231; *First Congregational Society v. Trustees*, 23 Pickering, 148.

It is well settled that the defendant corporation having waived any jurisdictional defect, the petitioners if allowed to intervene as parties could not overrule such action and reopen the matter of jurisdiction.

In *Central Trust Co. v. McGeorge*, 151 U., S. 131, 135, this court said:

> "It is scarcely necessary to say that, as the defendant company had submitted itself to the jurisdiction of the court, such voluntary action could not be overruled at the instance of stockholders and creditors, not parties to the suit as brought, but who were permitted to become such by the intervening petition."

In *Horn v. Pere Marquette R. Co.*, 151 Fed., 626, 634, the court, after citing the McGeorge case on this point, says:

> "A most absurd result would ensue if, when the corporation has submitted to the jurisdiction of the court, either as a court of equity or to the local jurisdiction, a creditor could come in, or when brought in, might re-open the matter of jurisdiction over the debtor corporation. If such an objection is not waived once for all, so as to close the question as to stockholders and creditors, what number of creditors would conclude the rest? In *Grand Trunk Ry. Co. v. Central Vermont Ry. Co.*, 85 Fed., 87, it was very logically ruled by Judge Wheeler that a mortgagee subsequently intervening and being made a defendant could not demur to the bill because the complainant who filed the bill was not a judgment creditor, being bound by the waiver of that objection by the railroad company which had answered, and consented to the appointment of a receiver."

See to the same effect, *Citizens Bank and Trust Co. v. Union Mining and Gold Co.*, 106 Fed. 97; *Forbes v. Memphis, El Paso and Pacific Railway*, 2 Woods, 323.

III.

The appointment of receivers by the Circuit Court was not void on the ground that there was no controversy before the Court.

Counsel says (pp. 10–14 of his brief) that there is no "controversy;" that there is no "matter in dispute;" "that there can be no controversy unless this suit is brought *in invitum* against an unwilling defendant, that is, one who does not consent to the judgment," and he quotes (p. 11) a statement from a case in the Federal Reporter, that "to constitute a controversy in an action at law there must be an allegation on one side and a denial on the other, making an issue of fact or an issue of law."

If this contention be correct, the consequences are startling. Every judgment by default and every decree *pro confesso* ever entered in the United States courts is void. Every decree in a suit for the foreclosure of a railroad mortgage entered by consent is void. A non-resident mortgagee cannot foreclose his mortgage in the United States courts unless the defendant denies the validity or amount of the mortgage lien.

Counsel intimates that perhaps his contention does not apply in its full length to an action at law. But there can be no such distinction. Judgments at law and decrees in equity must stand or fall together. A railroad corporation organized under the laws of one State and operating in a dozen different States discovers that it is insolvent; it communicates with the

non-resident trustee for mortgage bondholders and requests it to begin suit at once in order that a receiver may be appointed and the property taken into the possession of the court; it says to the trustee, "if you delay a single day there will be attachments and executions so that the road will be absolutely tied up and cannot be operated:" if the contention of counsel be correct, that communication deprives the United States courts of jurisdiction to entertain a bill by the trustee to foreclose the mortgage, or to appoint receivers.

Counsel seeks to avoid some of these consequences by the suggestion that cases for the administration of the assets of railway companies engaged in interstate commerce and orders appointing receivers in such cases do not need to be controversies in the sense in which he uses the word. He says that in those cases the Federal Courts have jurisdiction irrespective of the citizenship of the parties; that they are "cases" arising under the Constitution of the United States, although they may not be "controversies" between the parties, and that in "cases" arising under the Constitution or laws of the United States, the Federal Courts may interfere although no actual controversy exists.

The distinction which counsel draws we submit does not exist. In the first place a suit does not arise under the Constitution or laws of the United States because one of the parties to the cause is engaged in interstate commerce. If it did, every suit for personal injuries against a corporation engaged in interstate commerce

could be brought in the United States Courts without regard to the citizenship of the parties, and a trustee of a railroad mortgage who is a citizen of the same State as the railroad engaged in interstate commerce could file a bill in the United States Courts for the foreclosure of the mortgage and for the appointment of a receiver. The law is settled that a suit does not arise under the Constitution or laws or treaties of the United States unless it appears that some title, right, privilege or immunity on which the recovery depends will be defeated under one construction of the Constitution or law or treaty of the United States or sustained by the opposite construction. *Newbury Water Co. v. Newburyport*, 193 U. S., 561; *Western Union Tel. Co. v. Ann Arbor R. Co.*, 178 U. S., 239; *McKane v. Des Moines*, 174 U. S., 168. In the second place, the language of the Revised Statutes, giving the Circuit Courts jurisdiction, shows that the words "suit" and "controversy" mean the same thing. The Act of March 3, 1873, chap. 137, as amended by the Act of March 3, 1887, chap. 373, sec. 1, and the Act of August 13, 1888, chap. 866, sec. 1, reads as follows:

> "That the Circuit Courts of the United States shall have original cognizance concurrent with the Courts of the several states *of all suits of a civil nature, at common law or in equity*, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and arising under the Constitution or laws of the United States, or treaties made or which shall be made, under their authority, or *in which contro-*

> *versy* the United States are plaintiffs or petitioners or in which there shall be a controversy between citizens of different states, in which the *matter in dispute* exceeds, exclusive of interest and costs, the sum or value aforesaid."

A "suit" in which the United States are plaintiffs or petitioners is referred to as "which controversy."

"Suit" and "controversy" mean the same thing and "matter in dispute" means merely the subject of the controversy.

In *Weston v. The City Council*, 2 Peters, 450, at p. 464, the court said:

> "The term ('suit') is certainly a very comprehensive one and is understood to apply to any proceeding in a court of justice by which an individual pursues that remedy in a court of justice which the law affords him."

In *Colwell v. City Water Supply Co.*, 121 Fed., 53, the Circuit Court of Appeals said:

> "The sum or value of the matter in dispute which conditions the jurisdictions of a Federal Circuit Court is the amount or value of that which the complainant claims to recover or the amount or value of that which the defendant will lose if the complainant obtains the recovery he seeks."

If counsel be correct in the claim that to constitute a controversy there must be an allegation on one side and a denial on the other, what becomes of the equity rules (see Rules 18 and 19) that expressly provide for the entering of a decree *pro confesso* and that always

have so provided and of Section 8 of the Judiciary Act of 1875 that provides for taking judgment by default in a suit to foreclose a lien where a non-resident defendant fails to appear?

In *Hefner v. Northwestern Life Ins. Co.*, 123 U. S., 747, a case where the validity of a foreclosure decree came up, the court said (p. 756):

> "By the decree reciting and confirming his default, the bill was taken for confessed against him; and any final decree, warranted by the allegations of the bill, bound him to the same extent as if he had appeared in the suit and demurred to or contested those allegations."

In *Thomson v. Wooster*, 114 U. S., 104, 110, this court said:

> "A confession of facts properly pleaded dispenses with proof of those facts and is as effective for the purposes of the suit as if the facts were proved, and a decree *pro confesso* regards the statements of the bill as confessed."

In Pacific Railroad v. Ketchum, 101 U. S., 289, the Court said, at p. 296:

> "Here the record states in terms that the Company assented to all that has been done. *This is equivalent to an admission by them on the record that the facts exist on which the decree rests.* * * * The record showing as it does affirmatively that the Company gave its consent to the decree, we need not inquire what we would do if the case depended alone on the consent of the solicitor."

And again, on page 298:

> "For the purposes of this appeal we need not inquire when the Circuit Court first got jurisdiction of this suit. It is sufficient if it had jurisdiction when the decree appealed from was rendered. As no objections were made by the parties in the progress of the cause to the right of the Court to proceed, *and the decree when rendered was consented to*, it is enough for the purposes of this appeal if the record shows that when the consent was acted on by the Court jurisdiction was complete. Consent cannot give the Courts of the United States jurisdiction, but it may bind the parties * * * if when the Court acts jurisdiction has been obtained."

We have quoted from this case at some length in order to show how utterly irreconcilable with it is the statement that the Court cannot have jurisdiction if the parties do consent to the decree.

On page 297 the court says that the question before them is whether the court below had jurisdiction of the cause so as to authorize it to enter any decree. The claim was not made, to be sure, so far as the opinion shows, that because the defendant by its answer confessed the allegations of the bill and consented to the decree, the Court was without jurisdiction, but it cannot be assumed for a moment that if any such doctrine exists the entire Court would have overlooked it.

In the case of *Brown v. Lake Superior Iron Co.*, 134 U. S., 530, 534 (stated at length *infra* pp. 51-54), this court said speaking by Mr. Justice Brewer:

> "Obviously the proceedings had were with its (defendant's) consent. Immediately on filing the bill it entered its appearance; and the same day a receiver was appointed, without objection on its part. It suffered the bills to be taken *pro confesso*."

The question in that case was whether the court below had jurisdiction of the cause. Again the point raised by counsel for the petitioner was not suggested, so far as the opinion shows, by any one. Again it is inconceivable that if there were any such point, the court would not have taken it of its own motion.

In the case of *Horn v. Pere Marquette Railroad*, 151 Fed., 626, 633, already referred to us by (*supra*, p. 59), the defendant corporation appeared and by a sworn answer confessed the debt and its utter insolvency and joined in the prayer for the appointment of a receiver.

In *Ohio Central Railroad Co. v. Central Trust Co. of New York*, 133 U. S., 83, a bill in equity for the foreclosure of a mortgage of a railroad for non-payment of interest was taken *pro confesso*, the company appearing but not answering. The court held that it was proper to enter such a decree *pro confesso* as was justified by the bill, but no other.

It cannot be, we respectfully submit, that the universal practice of the Circuit Courts with which every member of the bar is familiar, of entering decrees upon consent of the parties can be wrong. It cannot be that because an insolvent corporation, wishing its property to be distributed among its creditors by a court of equity, notifies a non-resident *bona fide* creditor to begin suit,

the United States Court is barred from taking jurisdiction of that suit. If it can, then in every case where a receiver is appointed, the defendant corporation either expressly consenting or not opposing, it will at any stage of the case be open to inquiry by any creditor whether or not the defendant was really a party *in invitum*. If such is the law, no receivers can safely act under such a suit; no one can safely lend money to receivers in such a suit, buy their certificates or otherwise contract with them. The correct doctrine must be that the question of whether or not there is a controversy is determined by the allegations of the bill. Here it appears that debts were due the complainants, that they had demanded payment of the debts and the defendant had refused to pay them. The fact that the debts are honest debts and therefore the defendant cannot refuse to pay them and therefore has no right to deny the allegations showing that the debts are due and is perfectly willing—not to pay the debts—but to consent that a decree may be entered by the means of which its assets shall be devoted to the payment of those debts, surely cannot deprive the Circuit Court of jurisdiction when the citizenship of the parties and the amount of the indebtedness is sufficient to confer jurisdiction.

This court has said in *Dickerman v. Northern Trust Co.*, 176 U. S., 181, that:

> "If the Company had become insolvent and could no longer carry on its business, it was not only its legal obligation but its moral duty to

surrender the mortgaged property to the mortgagees in order that the latter might protect their interests."

The defendant, New York City Railway Company had become insolvent. It could not carry on its business. It was its legal obligation and its moral duty to surrender its property to its creditors. It did it, as the the insolvent corporation in the Dickerman case surrendered its property, through proceedings instituted in the United States courts with its full consent.

IV.

There was no collusion.

There is no denial of these facts alleged in the bill: the complainants are residents and citizens of the States of Pennsylvania and New Jersey, respectively; the defendant is indebted to one complainant $36,831.38 for materials furnished by it and to the other $11,173.27 for work done by it; the complainants have demanded payment of the defendant and the defendant has refused payment; the prayer for relief is that the assets of the defendants should be administered by the Court. There are bona fide debts due to bona fide residents and citizens of states other than the state of which the defendant is a citizen and resident.

The charge of collusion rests on the statement that it is manifest that complainants and defendant arranged together that the suit should be brought in the Federal Court, that the averments of the bill should be admitted

by the answer, and that the defendant should assent to the appointment of receivers.

Petitioners say that "the parties to the suit have been improperly or collusively made or joined for the purpose of creating a case cognizable under the Act of March 3, 1875."

Section 5 of that act reads as follows:

> "That if in any suit commenced in a Circuit Court or removed from a state court to a Circuit Court of the United States it shall appear to the satisfaction of said court at any time after such suit has been brought or removed thereto that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said Circuit Court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this Act, the said Circuit Court shall proceed no further therein, but shall dismiss the suit or remit it to the court from which it was removed, as justice may require, and shall make such order as to costs as shall be just" * * *

Previous to the passage of that act, if a colorable transfer was made to make a case for the Federal Courts, that fact if set up by a plea in abatement would necessitate a dismissal of the bill. But the point could be taken only by plea in abatement; and a plea or answer to the merits was a waiver of the defense (*Farmington v. Pillsbury*, 114 U. S., 138, *Lehigh Mining and Manufacturing Company v. Kelly*, 160 U. S., 327).

Farmington v. Pillsbury was a case where a plaintiff who had no real interest in the subject-matter of the suit permitted his name to be collusively used for the purpose of giving jurisdiction to the Circuit Court of the United States. This court held that the suit should be dismissed under the provisions of Section 5 of the Act of 1875. Chief Justice Waite, delivering the opinion of the court, said:

> "Under the Act of 1789, the jurisdiction of the courts of the United States in suits by assignees of choses in action was confined within narrow limits and *there was comparatively little danger of collusion to create a case of that character cognizable by those courts because if the owner of the claim could sue in his own name there would ordinarily be no motive for transferring it to another to bring the action.*"

The Chief Justice then says that before the Act of 1875 the citizenship of the parties could not be put in issue except by a plea in abatement. He then proceeds:

> "Such was the condition of the law when the Act of 1875 was passed, which allowed suits to be brought by the assignees of promissory notes negotiable by the law merchant, as well as of foreign and domestic bills of exchange, if the necessary citizenship of the parties existed. This opened wide the door for frauds upon the jurisdiction of the Court by collusive transfers, so as to make colorable parties and create cases cognizable by the Courts of the United States. To protect the courts as well as parties against such frauds upon their

jurisdiction, it was made the duty of a court at any time when it satisfactorily appeared that a suit did not 'really and substantially involve a dispute or controversy properly within its jurisdiction, or that the parties had been improperly or collusively made or joined * * * for the purpose of creating a case cognizable' under that act 'to proceed no further therein,' but to dismiss the suit or remand it to the State court from which it had been removed. * * * The old rule established by the decisions, which required all objections to the citizenship of the parties, unless shown on the face of the record to be taken by plea in abatement before pleading to the merits, was changed and the courts were given full authority to protect themselves against the false pretenses of apparent parties. * * * *It does not, any more than did the Act of 1789, prevent the courts from taking jurisdiction of suits by an assignee when the assignment is not fictitious, and actually conveys all the interest of the assignor in the thing assigned*, so that the suit when begun involves really and substantially a dispute or controversy in favor of the assignee for himself and on his own account against the defendant."

The Court said in *Williams v. Nottawa*, 104 U. S., 209, 211, referring to the Act of 1875:

"In extending a long way the jurisdiction of the courts of the United States, Congress was specially careful to guard against the consequences of collusive transfers to make parties." * * *

Section 5 was part of an act, the earlier provisions of which had allowed many transferees

and assignees to sue in the United States courts who before that act could only sue in the State courts. What was in the mind of Congress in passing Section 5 was (*a*) to prevent transfers which would, under Section 1 of the Act of 1875, if *bona fide*, give the United States Courts jurisdiction, from doing so if merely colorable and (*b*) to enable the United States Courts themselves on their own motion whenever at any stage of a case it should "appear to their satisfaction" that a transfer was merely colorable to dismiss the suit or to remit it to the court from which it came. The language of the section was broad and whatever is within it, whether a colorable transfer, a colorable change of residence, or a colorable refusal to sue on the part of a corporation as a preliminary to a stockholder's suit, this court has held to be governed by the act. *But no case can be found where it has been held or been claimed that the act applies to the case of a bona fide citizen of one State suing a bona fide citizen of another for a bona fide claim that accrued originally to the complainant and existed in his favor at the beginning of the suit* [redacted].

The cases that this Court has held to be collusive are:

(*a*) Cases where the plaintiff was the transferee of claims transferred to him for collection by citizens of the same State as the defendant (*Williams v. Nottawa*, 104 U. S., 209; *Rosenbaum v. Bauer*, 120 U. S., 450; *Lake County Commissioners v. Dudley*, 173 U. S., 243.

(*b*) Cases where the plaintiff was the transferee of

claims transferred to him for collection by citizens of States other than the State of the defendant, which, by reason of their small amount, could not have been sued on separately in the United States Courts (*Waite v. Santa Cruz*, 184 U. S., 302).

(*c*) Cases where the plaintiff removed from a State of which the defendant was a citizen to another State, with the sole object of suing in the United States Court and with no purpose of acquiring a domicile or settled home there (*Morris v. Gilmer*, 129 U. S., 315).

(*d*) A case in principle like (*c*) where the stockholders of a corporation of one state organized a corporation under the laws of another and then conveyed their lands in the first state to the new corporation without consideration and without dissolving the old corporation for the sole purpose of being able to sue in the United States Court citizens of the state of which the old corporation was a citizen (*Lehigh Mining and Manufacturing Company v. Kelly*, 160 U. S., 327).

(*e*) Cases where stockholders in behalf of a corporation sued citizens of the same state as the corporation, making the corporation a party defendant on the ground that it had refused to sue and either the corporation had not refused or its refusal was a mere pretense in order to create a case for the United States Court. (*Detroit v. Dean*, 106 U. S., 537; *Dawson v. Columbia Trust Company*, 197 U. S., 178.)

Cases under class (*e*) fall also under Rule 94.

In *Dawson v. Columbia Trust Company*, 197 U. S.,

178, it appeared that the City of Dawson, Georgia, had entered into a contract with a water company, a Georgia corporation, to use and pay for its water during the period of twenty years. The city made a formal repudiation of this contract. The mortgagee of the Water Works Company, a Pennsylvania corporation, filed a bill in equity in a circuit court of the United States to restrain the city from building a new set of water works and to compel it specifically to perform its contract with the Water Works Company. That Company was joined as a party defendant. The water company was in no true sense a party defendant. It had always opposed repudiation of the contract; its interests were identical with those of the mortgagee. The Supreme Court, accordingly, directed the bill to be dismissed for want of jurisdiction. Mr. Justice HOLMES said, at page 180:

> "We are of opinion that the bill should have been dismissed for want of jurisdiction. The Water Works Company is admitted to have been a necessary party, and it, like the defendant city, was a Georgia corporation. It was made a defendant, but the court will look beyond the pleadings and arrange the parties according to their sides in the dispute. When that is done it is obvious that the Water Works Company is on the plaintiff's side and was made a defendant solely for the purpose of reopening in the United States Court a controversy which had been decided against it in the courts of the state. *There was a pretense of asking relief against it, as we have stated, but no foundation for the prayer was laid in the allegations of the bill.*

On the contrary, it appears from those allegations that the Water Works Company insisted on its contract with the city, and did everything in its power to carry the contract out. It also recognized the plaintiff's right to receive the rentals and yielded to its demand. No difference or collision of interest or action is alleged or even suggested. If we assume that the plaintiff is more than an assignee of the city's contract to pay, which we do not intimate, still, when the arrangement of the parties is merely a contrivance between friends for the purpose of founding a jurisdiction, *which otherwise would not exist*, the device cannot be allowed to succeed. See *Removal Cases*, 100 U. S., 457, 469; *Hawes v. Oakland*, 104 U. S. 450, 453; *Detroit v. Dean*, 106 U. S. 537, 541; *Doctor v. Harrington*, 196 U. S. 579. Act of March 3, 1875, c. 137, sec. 5, 18 Stat. 470."

In every case, in every class, except (*b*), it appears that the person who owned the cause of action sued on was a citizen of the same State as the person against whom he sought to enforce it, and that in the case in class (*b*) while the owners of the claims were citizens of another State the amount of the claim of each owner was too small to allow suit upon it in the United States Court. In none of the cases would the United States Court have had jurisdiction of a suit by the real owner against the defendant. But even if the United States Court would not have had jurisdiction of a suit by the original owner, if he conveys or assigns certain property for the express purpose of enabling suit to be brought in the United States Court, and if the transaction is a

real transaction, it will not be deemed collusive and the United States Court will have jurisdiction; thus in *Dickerman v. Northern Trust Company*, 176 U. S., 181, this court said:

> "It is well settled that a mere colorable conveyance of property for the purpose of vesting title in a non-resident and enabling him to bring suit in a Federal Court will not confer jurisdiction, but if the conveyance appear to be a real transaction the Court will not, in deciding upon the question of jurisdiction, inquire into the motives which actuated the parties in making the conveyance (*McDonald v. Smalley*, 1 Pet., 620; *Smith v. Kernochan*, 7 How., 198; *Barney v. Baltimore*, 6 Wall, 280; *Farmington v. Pillsbury*, 114 U. S., 138; *Crawford v. Neal*, 144 U. S., 585). The law is equally well settled that, if a person take up a *bona fide* residence in another State, he may sue in the Federal court, notwithstanding his purpose was to resort to a forum of which he could not have availed himself if he were a resident of the State in which the court was held (*Cheever v. Wilson*, 9 Wall, 108, 123; *Briggs v. French*, 2 Sumn, 251; *Catlett v. Pacific Ins. Co.*, 1 Paine, 594; *Cooper* v. *Galbraith*, 3 Wash., 546; *Johnson v. Monell*, Wool., 390)" (p. 191).

It will be seen that in every case that the court has held to be collusive some positive action had been taken to found a jurisdiction which, in the words of Mr. Justice HOLMES "otherwise would not exist," and the action had been merely colorable and not genuine.

In the case at bar there is absolutely nothing of the

sort. The jurisdiction always existed from the time the indebtednesses arose down to the present moment.

In *Blair v. City of Chicago*, 201 U. S. 400, it was claimed by counsel for the city that the bill should have been dismissed by the Court for lack of jurisdiction because of collusion and attempted imposition of a fraud upon the Court. The Court said:

> "As to the conspiracy to get the case into the federal court, with a view to the decision of the rights of the parties therein, we are not aware of any principle which prevents parties having the requisite citizenship and a justiciable demand from seeking the federal courts for redress, if such be their choice of a forum in which to have contested rights litigated. Having a proper cause of action and the requisite diversity of citizenship confers jurisdiction upon the federal courts, and in such cases the motive of the creditor in seeking federal jurisdiction is immaterial. South Dakota v. North Carolina, 192 U. S. 286, 310; Dickerman v. Northern Trust Co., 176 U. S. 181, 190; Lehigh Mining & Mfg. Co. vs. Kelly, 160 U. S., 327, 336; Crawford v. Neal, 144 U. S., 585; Cheever v. Wilson, 9 Wall. 108, 123; Smith v. Kernochan, 7 How. 198, 216.
>
> "It is true that the judgments were taken and the receivers appointed on the same day, and it is quite likely that the receiverships were in view when the judgments were taken and that preparations had been made in that direction, but we perceive in this no legal objection to the jurisdiction of the court" (p. 448).

In *Dickerman v. Northern Trust Co.*, 176 U. S. 181,

an action for the foreclosure of a mortgage on the ground that there had been a default in the provisions of the mortgage in that a judgment had been obtained against the corporation on which an execution had been returned unsatisfied, it was shown that a bondholder acting "directly or indirectly," as the Court says, through the legal firm, who were also counsel of the defendant company, brought suit before a justice of the peace upon six coupons. Summons was issued on January 22, returnable January 28, and served upon the president of the company at five o'clock in the afternoon of January 22. Without waiting till the return day of the summons, the president, on the afternoon of January 22, appeared before the justice of the peace and consented to an immediate trial, which resulted in a judgment for $180. Within half-an-hour after the summons had been issued, execution was placed in the hands of the constable. On the same day the trustees under the mortgage declared the principal and interest due, and at once took possession of the property. It also appeared that the president of the company had been in consultation with the attorneys of the trustees about foreclosing the mortgage and taking possession of the property for several days prior to January 22 (p. 189). The Court *held*, that although these proceedings were taken by connivance and consent of the parties, they were not collusive in a legal sense, as the debt was honestly due and the plaintiff was entitled to judgment and that while the judgment was obtained for the obvious purpose of enabling the trustees to declare the mortgage to be due, the Court would

not inquire into the motive of the parties. Mr. Justice BROWN said at p. 189:

> "We have no doubt that this judgment was collusive in the sense that it was obtained by the plaintiff and consented to by the defendant company for the purpose of giving the trustees a legal excuse for declaring the principal and interest of the mortgage to be due, and to give authority for a foreclosure. But this did not constitute collusion in the sense of the law, nor does it meet the exigencies of the petitioners' case. Collusion is defined by Bonvier as 'an agreement between two or more persons to defraud a person of his rights by the forms of law, or, to obtain an object forbidden by law,' and in similar terms by other legal dictionarians. It implies the existence of fraud of some kind, the employment of fraudulent means, or lawful means for the accomplishment of an unlawful purpose: but if the action be founded upon a just judgment, and be conducted according to the forms of law and with a due regard to the rights of parties, it is no defense that the plaintiff may have had some ulterior object in view beyond the recovery of a judgment, so long as such object was not an unlawful one.
>
> "If the law concerned itself with the motives of parties new complications would be introduced into suits which might seriously obscure their real merits. * * *
>
> "Now, in this case there is no doubt that Flanagan's claim was an honest one; that the coupons upon which he brought the suit were due and unpaid, and there is nothing to show that he would not have been entitled to a judgment upon

them if the defendant had made a contest. * * * *If the company had become insolvent and could no longer carry on its business it was not only its legal obligation, but its moral duty, to surrender the mortgaged property to the mortgagees, in order that the latter might protect their interests.*" * * *

V.

The jurisdiction of the court below to appoint receivers of the Metropolitan Street Railway Company rests (*a*) upon the fact that its property was in the actual possession of receivers appointed by the Circuit Court of the United States (*Freeman v. Howe*, 24 How., 450; *Krippendorf v. Hyde*, 110 U. S., 276; *Gumbel v. Pitkin*, 124 U. S., 131; *Morgan's Company v. Texas Central Ry.*, 137 U. S., 171; *In re Tyler*, 149 U. S., 164; *Rouse v. Letcher*, 156 U. S., 47; *White v. Ewing*, 159 U. S., 36; *Compton v. Jesup*, 68 Fed., 263; *Toledo, &c., R. Co. v. Continental Trust Co.*, 95 Fed., 497, 505); (*b*) upon the "theory that an insolvent railroad corporation has a standing in a court of equity to surrender its property into the custody of the court, to be preserved and disposed of according to the rights of its various creditors, and, in the meantime, operated in the public interest." (Mr. Chief Justice Fuller in *Quincy, etc., R. R. Co. v. Humphreys*, 145 U. S., 82, 95, describing the theory of the Wabash bill).

The Metropolitan Street Railway Company was a proper party defendant to the original bill. The com-

plainants might have joined it as a defendant at the time they filed the bill. They will claim, and under the authority of cases in this court their claim cannot be controverted, that they are entitled to a preferential lien as against the surplus income of the Metropolitan Street Railway Company. The claims upon which the indebtedness to the complainants is founded arise from supplies furnished and work done that were essential to the operation of its properties. In the case of the *Virginia and Alabama Coal Co. v. Central R. R. and Banking Co. of Ga.*, 170 U. S., 355, it appeared that the Virginia and Alabama Coal Company and the Sloss Iron and Steel Company sold coal to the Richmond and Danville Railroad Company, the lessee or operator of the railroad of the Central Railroad and Banking Company of Georgia. The Court, speaking through Mr. Justice WHITE, after saying that—

> "in each of the intervening petitions a liability of the Central Company was asserted to arise from the fact that the coal was sold to and purchased by the Danville Company for use in operating the lines of railway of the Central Company"—

and after examining the cases beginning with *Burnham v. Bowen*, 111 U. S., 776, which state the equitable doctrine under which certain creditors are given priorities even against mortgagees, says (p. 367):

> "Is there any good reason why the equitable doctrine applied in the cases to which we have referred should not be applied under a state of facts such as shown at bar, where the immediate manage-

ment of a road was confided by its owners, without protest or interference by the bondholders, to third parties? It would seem not."

And again:

"On the other hand, if the lease was lawful, upon the insolvency for any cause of the Danville Company (the lessee), while the lease continued in force, its relation toward its leased line in the adjustment and settlement, as against the leased road, of equities arising between those who had furnished supplies to the road and the bondholders would be precisely that of an owner of the leased lines, and, if such possession is terminated by the court through the agency of a receiver, equities in the income of the property continue to survive."

The jurisdiction of the court below in the suits in which the Morton Trust Company is complainant rests upon the fact that the property covered by its mortgages was at the time of the beginning of those suits in the actual possession of receivers appointed by the Circuit Court of the United States. *Gumbel v. Pitkin*, 124 U. S., 131; *Put-in-Bay Water Works, etc., Co. v. Ryan*, 181 U. S., 409, 432, 433; *Electrical Supply Co. v. Put-in-Bay Water Works Co.*, 84 Fed., 740.

In the Electrical Supply Company case, 84 Fed., 740, the court held that a court of equity in which intervening petitions are filed asserting liens or interests in property which it has placed in the hands of a receiver in an original suit may entertain jurisdiction after such

them if the defendant had made a contest. * * * *If the company had become insolvent and could no longer carry on its business it was not only its legal obligation, but its moral duty, to surrender the mortgaged property to the mortgagees, in order that the latter might protect their interests.*" * * *

V.

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The Metropolitan Street Railway Company was a proper party defendant to the original bill. The com-

intervention, even though it subsequently appears that the original suit was collusively brought and should have been dismissed at the outset had the facts then been made to appear. The court further held that when a Circuit Court of the United States takes and exercises jurisdiction on a record apparently authorizing it and authorizes the issue of receiver's certificates which are sold to *bona fide* purchasers and it subsequently appears that by reason of the collusion of the parties in bringing the suit the jurisdiction is defective, and the cause must, therefore, be dismissed, the court, nevertheless, has power as a preliminary to dismissing it, to protect the receiver's certificates by directing a sale of so much of the property in the receiver's hands as may be necessary for that purpose.

An appeal was taken to the Supreme Court of the United States which brought up the questions of jurisdiction in the Put-in-Bay Water Works litigation. Among other decrees that came before this court on the appeal was the decree made by Judge Severans, his opinion being reported in 84 Fed., 740. The matter came before this court on a certificate "that the appeal herein allowed is granted for the single purpose of presenting to the said Supreme Court the question whether the Circuit Court had jurisdiction to entertain the said cause and render the decrees so appealed from." This court answered the question in the affirmative.

From the report in 58 Fed., 732, 733, it appears that a bill was filed by the Electrical Supply Company, a Connecticut corporation against the Put-in-Bay Water

Works Company, an Ohio corporation, Tillotson, a citizen of Ohio, the Industrial Mining and Guaranty Company, a New York corporation, and other defendants. The relief ostensibly sought "was the enforcement of an alleged mechanics lien for $2,787.04 for supplies and materials furnished the Put-in-Bay Company." The bill prayed that a lien be decreed on the property for the sum found due complainant. The bill was filed on the 9th of September and was served the next day upon the Put-in-Bay Water Works Company, and the defendant Tillotson and some of the other defendants. On the same day Tillotson filed his answer and a cross-bill against certain of his co-defendants, some of whom were residents of the same state as Tillotson. On September 10 an injunction was issued on the answer and cross-bill. On the motion to dissolve the injunction, affidavits were filed to the effect that the amount actually due the complainant was only $861.23. Swan, D. J., said, in his opinion (p. 743), that as this allegation was not denied, Tillotson must be regarded as confessing the truth of the statement that the value of the material was only $861.23; that if he and his attorney knew that fact, and Tillotson must have known it as he ordered and used the material, the alleged suit which they induced the complainant to bring for their own ends was "flagrantly collusive—a mere sham and pretense" to create a "fictitious ground of Federal jurisdiction"—and, under the act of March 3, 1875, it was the duty of the conrt to have dismissed it. The learned judge said, at page 744, that the decree of the

Circuit Court continuing the injunction should be reversed and a decree entered dismissing the original and cross-bills for want of jurisdiction. Circuit Judges Taft and Lurton agreed that complainant was entitled to a lien for only $861.23, that the averment in the complaint that more than $2,000 in work and material was furnished was falsely made and for the collusive purpose of invoking the equitable jurisdiction of the Federal court, and that the injunction should be dissolved. They thought, however, that they had no power to direct a dismissal of the bill or the vacation of the order appointing a receiver, saying:

> "Those are matters which by the terms of Section 7 of the Court of Appeals Act remained within the cognizance of the Circuit Court until a final decree is entered and appealed from. While I fully concur in the view that the Circuit Court before dismissing the bill for want of jurisdiction may require payment of the reasonable expenses incurred in the case and preservation of the property taken within its custody, I do not think we can make any order on this appeal touching the matter. Our only action should be to reverse the order continuing the injunction."

The Supreme Court (181 U. S., 431) referring to this opinion, says:

> "It is true that observations were made by the judges of that court based on affidavits made in the court below that jurisdiction had been collusively obtained by reason of false statements of the amount of materials sold by the complainant to the defendant

company and they seem to have thought that by such affidavits the Circuit Court had been made to know that its equitable jurisdiction had been improperly invoked. *Industrial etc. Co. v. Electrical Supply Co.*, 58 Fed., 733, 744.

But such observations of the learned judges did not have the force of a decision nor did they undertake to direct the Circuit Court to dismiss the bill for want of jurisdiction.

It further appears that upon the filing of a mandate of the Court of Appeals in the Circuit Court, the counsel of complainant filed a motion to dismiss the bill and claimed that the Court of Appeals had decided that the Circuit Court had no jurisdiction. This and subsequent motions to the same effect were overruled by the Circuit Court, *and the Circuit Court of Appeals denied an application for a writ of mandamus*" (90 Fed., 831.)

The case came before this court on the question whether the Circuit Court had jurisdiction to entertain the cause. The court said (p. 431):

"It is not clearly shown in this record that at any time after the suit was brought it was made to appear *to the satisfaction of the Circuit Court* that the suit did not really and substantially involve a dispute or controversy properly within the jurisdiction of said Circuit Court. On the contrary it appears that the Circuit Court was not so satisfied."

And on page 432, the court says:

"Jurisdiction having attached under the allegations of the original bill and the court having proceeded in a proper exercise of its discretionary

power to appoint a receiver and to authorize a large expenditure of money raised by certificates in order to protect and preserve the property in its custody and the court having also in the exercise of its power as a court of equity allowed the intervention of other creditors as between some of whom and the defendant company there was jurisdiction in the court both as respects diversity of citizenship and amount of claims, we think its jurisdiction did not fail by reason of anything that appeared in *ex parte* affidavits filed in behalf of the defendant company denying the truth of the allegations contained in the original bill in respect to the amount in dispute."

Conclusion.

It is therefore respectfully submitted that all the acts of the Circuit Court were done in the exercise of legitimate jurisdiction; that there was no collusion and that the application for a writ of mandamus should be denied.

Washington, December 9, 1907.

JAMES BYRNE,
Of Counsel for Respondents.

Re METROPOLITAN RAILWAY RECEIVERSHIP.[1]

PETITIONS FOR WRITS OF MANDAMUS.

Nos. 11, 12, Original. Argued December 9, 1907.—Decided January 13, 1908.

An unsatisfied, justiciable claim of some right involving the jurisdictional amount made by a citizen of one State against a citizen of another State is a controversy or dispute between the parties within the meaning of

[1] The Docket Titles were, in No. 11, Matter of Reisenberg and another, and in No. 12, Matter of Konrad and another. The petition in each case was for a Writ of Mandamus against the Honorable E. Henry Lacombe, Circuit Judge of the United States for the Second Circuit and against the Circuit Court of the United States for the Southern District of New York.

the statutes defining the jurisdiction of the Circuit Court (acts of March 3, 1875, c. 137, § 1, 18 Stat. 470; March 3, 1887, c. 373, § 1, 24 Stat. 552; August 13, 1888, c. 866, § 1, 25 Stat. 433), and such jurisdiction does not depend upon the denial by the defendant of the existence of the claim or of its amount or validity.

In this case there being such a claim, and the requisite diversity of citizenship, the Circuit Court had jurisdiction although the defendant admitted the facts and the liability, waived the objection that the complainants were not entitled to equitable relief, and joined in the request for appointment of receivers.

The mere fact that the defendant is engaged in interstate commerce does not give the Circuit Court jurisdiction; in cases in which this court has sustained the jurisdiction of the Circuit Court in the appointment of receivers, jurisdiction existed by reason of diversity of citizenship and not merely because the defendants were engaged in interstate commerce.

The defense in an equity suit that the complainant has not exhausted his remedy at law, or is not a judgment creditor, may be waived by defendant, and when waived—as it may be by consenting to the appointment of receivers—the case stands as though the objection never existed.

Where the averments of the bill are true, and there is no question as to the diversity of citizenship, or any evidence that a case was fraudulently created to give jurisdiction to the Federal court, the case will not be regarded as collusive merely because the parties preferred to resort to the Federal court instead of to a state court; in the absence of any improper act, the motive for bringing the suit is unimportant.

After the Federal court has properly obtained jurisdiction over a corporation and has appointed receivers thereof, an order permitting other parties closely identified therewith to intervene and extending their receivership over them is not of a jurisdictional nature, and in this case the discretion was, in view of all the facts, properly exercised.

A receivership of a railroad as a going concern, although at times necessary and proper—as in this case, where the refusal to appoint a receiver would have led to sacrifice of property, confusion among the creditors, and great inconvenience to the travelling public—should not be unnecessarily prolonged, and in case of unnecessary delay the court should listen to the application of any creditor upon due notice to the receiver for the prompt termination of the trust or vacation of the order appointing receivers.

THESE are original applications to this court for leave to file a petition for a mandamus, or, in the alternative, for a prohibition, addressed to the Honorable E. Henry Lacombe, one of the Circuit Judges of the Second Circuit, commanding him and the Circuit Court to dismiss the bill of complaint against the railroad companies hereinafter mentioned, and all pro-

ceedings therein, and to vacate injunctions therein issued by such judge, and also to vacate the orders appointing the receivers of such railroads, and to desist from exercising any further jurisdiction over such roads in such suit, or, in the alternative, commanding the judge to allow petitioners intervention, or that a writ of prohibition might issue to obtain the same relief.

It is alleged in the petition in No. 11 that the petitioners are creditors of the Metropolitan Street Railway Company on account of injuries alleged to have been received by each, through the negligence of the company's servants—in one case some time prior to June 27, 1895, and in the other on or about June 13, 1892. Actions had been brought by each, and are still pending at the time of this application.

In No. 12 it is alleged that the petitioner is the administrator of one Paul Planovsky, deceased, and as such he recovered a judgment for damages for the death of the decedent against the New York City Street Railway Company for over eight thousand dollars, which is still unpaid, the company having appealed from the judgment to the Appellate Division of the Supreme Court of the State of New York, and the appeal is still pending. The petitioner also alleged a cause of action in his own behalf, arising out of the refusal of the company to give him tickets entitling him to transfers, by which he was, as he alleged, damaged by the payment of additional fares to the amount of at least two hundred dollars.

The further facts set up in each of the petitions are substantially identical.

Upon reading the petitions orders were made allowing them to be filed, and rules to show cause why the petitions should not be granted were thereupon entered, returnable before this court on the ninth of December, 1907.

On that day there was duly filed a return of the Circuit Judge in each proceeding, who gave therein a short history of the litigation culminating in the appointment of receivers of the railroads mentioned, and stating the then condition of such

litigation. There were filed, as a part of such returns, copies of the bill of complaint under which the receivers were appointed, and of the answer of the New York City Railway Company, and also copies of certain affidavits made in behalf of complainants and defendant in the suit.

It is upon the case made by the petition for a mandamus and the return of the Circuit Judge that the questions arise for the decision of this court.

It appears from such record that in September, 1907, the New York City Railway Company and the Metropolitan Railway Company were corporations organized under the laws of the State of New York, and that the New York City Railway Company was operating a system of surface street railroads in New York County, as the owner of some and the lessee of others. The Metropolitan Railway Company was interested, either as owner or as lessee of some eighteen separate and independent railroads, all of which it had leased to the New York City Railway Company, by lease dated February 14, 1902, for 999 years.

While the New York City Railway Company was operating these various railways a bill against it was filed September 24, 1907, in the United States Circuit Court for the Southern District of New York, by the Pennsylvania Steel Company, a citizen of Pennsylvania, and by the Degnon Contracting Company, a citizen of New Jersey, as complainants, in which the complainants alleged an indebtedness due from the railway company of over $30,000 to the steel company and over $11,000 to the Degnon Company, for rails and other track material and for labor done for the company, at its request, and that payment of the debts had been demanded of the railway company by each of the complainants, and refused. It also appeared that the defendant was insolvent; that it was operating—as owner of some and lessee of other portions—a system of some five hundred miles of track, covering substantially all the surface railroads in New York, comprising many different companies, which owned many different rail-

roads, which had been leased to the Metropolitan Railway Company and by it leased to the defendant company; that all the roads which had been leased to the defendant company were covered by many separate and independent mortgages for different sums, maturing at different times; the New York City Railway Company was under obligations to pay the interest on the funded debt of its lessor, by reason of the lease from the Metropolitan Railway Company under which it was operating these various roads. Failure to meet the interest on the funded indebtedness as it matured would operate as a default and would render the mortgages enforceable.

One of these mortgages was for over twelve and another for over sixteen millions of dollars, and other mortgages increased the whole mortgage debt, on all the lines, to about one hundred millions of dollars. The New York City Railway Company, as lessee, had expended more than twenty millions of dollars in improvements, and was also indebted in other large sums, aggregating between five and ten millions of dollars more, by reason of expenditures for equipment and for repairs; also for taxes, and also for a large amount of floating indebtedness, besides which there were a great number of suits pending against it to recover damages for alleged injuries sustained through alleged negligence of its servants, and which were on the calendars of the New York courts, and the plaintiffs therein were pressing for trial. If judgment were obtained in any of these cases, or in any other of the cases where creditors were pressing their demands, it would result in disastrous consequence to the public, by a possible sale and dismemberment of the system under which the railroads were then operated, and might result in sales of portions of the roads to different individuals or corporations, by reason of which it would be impossible to continue the transfer of passengers from one road to another for one fare, such as was then in operation; and a sale of the roads would probably be for a sum greatly beneath their value, and thus the security for all the creditors for the ultimate payment of their claims would be impaired and very

greatly injured. The defendant was, as it is stated, unable to pay these various obligations as they matured.

For these, and other reasons stated with great detail in the bill, it was asked that the court would take the road into its possession, and that the creditors of the defendant might be ascertained and the court fully administer the fund, consisting of the entire railroad system and other assets of the defendant; that the assets should be marshalled and the respective liens and priorities existing therein should be ascertained, and that the court should enforce and decree the rights, liens and equities of all the creditors of the defendant, as the same might be finally ascertained by the court; that, for the purpose of preserving the unity of the system, a receiver might be appointed, with power to collect all the assets of the company, and with authority to run and operate the railroads and collect and receive all the rents due and apply the income thereof, under the direction of the court, for such period as the court should order; and for the purpose of protecting and preserving the railroads and assets and property, real and personal, from being sacrificed under proceedings liable to be taken, which might prejudice the same; and that, temporarily and pending the suit, an injunction might issue against the defendant and all persons claiming to act by, through or under it, and all other persons, restraining them from interfering with the receiver taking possession of the property, and that complainants might have such further relief as was proper.

Upon the filing of this bill a subpœna was duly issued and served upon the defendant, the New York City Railway Company, and an answer was put in by that company, which admitted all the allegations of the bill, and it joined in the prayer of the bill that the court should take possession, by receiver, of the system of railroads operated by the defendant, and that the receiver should, after taking possession of the entire property, preserve, manage, operate and control the same, and should pay all the indebtedness due or to become due, and

otherwise discharge all the duties imposed by courts upon receivers in similar cases.

Upon this bill and answer an application was made to the Circuit Judge for the appointment of a receiver and such application was granted, and receivers were duly appointed, with directions to operate the road. They were given power to borrow money, if needful in their judgment, in order to comply with the order, and make appropriate payments on account of accruing rent and other necessary charges, so far as might be necessary to pay off current expenses for labor and supplies, but for no other purpose without the order of the court. The defendant and its officers, and all persons claiming to act under the defendant, and all other persons, were enjoined from interfering in any way with the possession and management of the property by the receivers; and it was ordered that the defendant should show cause on the seventh of October, 1907, why the receivership should not be continued during the pendency of the suit; and upon the hearing thereon, it was ordered that any other creditors of the defendant, or any other party in interest, might be heard.

Prior to the seventh of October, 1907, the Metropolitan Railway Company presented a petition to the Circuit Court, wherein it asked to be made a party to the original suit of the steel company and others against the New York City Railway Company, and that the receivership under the bill might be extended so as to expressly embrace the interests of the Metropolitan Railway Company in the property. The petition showed the foregoing facts in relation to the lease of the property to the New York City Railway Company, and it averred that, by reason of these leases and the various mortgages upon portions of the property, and the operation of all the miles of railroad as one system, and because of the fact that the property of the Metropolitan Railway Company was all of it so leased to the New York City Railway Company that it had to depend on the solvency of the latter company in order that payment might be made on the various mortgages on the

various roads for which the Metropolitan Railway Company was responsible as lessee, and which it had also leased to the New York City Railway Company, the two companies were so inextricably bound together that if the New York City Railway Company went into the hands of a receiver and all its property were taken possession of by that officer it was necessary, in the interest of all concerned, that the Metropolitan Railway Company should also be made a party to the suit and the receivership extended to it. Under this petition the court granted an order making the Metropolitan Railway Company a party defendant and extending the receivership to it, and the injunction was also extended so as to enjoin that company from interfering with the possession of the receivers.

In October, 1907, an application was made to the Circuit Court on the part of those who are now petitioners in this court, in which application, it was alleged that the bill of complaint in the above-mentioned suit, and the answer consenting to the appointment of receivers and admitting the allegations in the bill, were filed collusively for the purpose of avoiding the jurisdiction of the courts of the State, and for the purpose of creating a case cognizable under the judiciary act of the United States by the United States courts. And it was averred that the suit in which the bill and answer were filed did not and does not really and substantially involve any dispute between the parties, nor did it involve any real or substantial controversy between them, or any dispute between them which was within the jurisdiction of the court. (All these averments were reiterated in the petitions presented to this court.) Various other facts were included in the petition to the Circuit Court, and it was prayed that an order might be made dismissing the bill in equity for fraud, collusion and want of jurisdiction and setting aside the order appointing a receiver, or, in case that application was denied, then that the order appointing a receiver should be amended by providing that liabilities for personal injuries and for causing the death of individuals should have the preference over other claims on

the distribution of the assets. The petition was subsequently amended so as to add a further prayer that the petitioner, individually and as administrator, might be allowed to intervene in the suit on behalf of himself individually and as administrator and on behalf of all other judgment creditors of the defendant who might come in and contribute to the defense of the suit.

In opposition to this application affidavits were presented by the persons who had verified the original bill of complaint in behalf of the two companies against the New York City Railway Company (and copies of these affidavits are made part of the returns of the Circuit Judge), denying that the purpose of the suit or of the application for the receivership was for stock jobbing or other improper purposes, and each admitted that the suit was brought in the Circuit Court of the United States for the purpose of having that court take jurisdiction, and denied that there was any impropriety or collusion or anything else wrongful in the conduct of the complainants. Each affidavit contained an averment that as non-residents of the State of New York, complainants had an absolute right to decide whether to bring the suit in the courts of the United States or in the courts of the State of New York; and it was denied that the object of the suit was anything else than appears on the face of the bill, namely, the administration of the assets of the defendant in a proper court having jurisdiction thereof. All charges of collusion and suppression of facts and of wrongdoing were denied absolutely. And a similar affidavit was made by the officers of the New York City Railway Company who had verified the answer to the bill of complaint, and copies thereof are also made part of the returns of the Circuit Judge. The application was denied.

On October 25, 1907, a decree was entered adjudging the New York City Railway Company to be insolvent and ordering a reference to a master to take proof of claims and report to the court, providing that all claims should be presented to the master on or before November 30, 1907, and that the

master should give public notice accordingly, the notice to contain a statement of the time and place of first hearing before the master.

On the ninth of November, 1907, the court made a similar order, adjudging the Metropolitan Railway Company insolvent, and adjudging that its assets should be marshalled, and appointing a master as in the other case.

The order continuing the appointment of the receivers permitted all pending suits against the New York City Railway Company and the Metropolitan Railway Company, which were begun before the receivers were appointed, to be prosecuted to judgment. In regard to claims for damages resulting from accidents before the receivers had been appointed, but in which suit had not been commenced at the time of such appointment, it was provided that they might be filed with the receivers and might go to a master for adjustment, and, in any case, it was ordered that if the plaintiff wished a jury trial he might have it, and the claim, if judgment were obtained, would thereby be liquidated, and would rank with claims already in suit.

As a reason for commencing these proceedings petitioners averred that they could not appeal from the order of the Circuit Court denying their application for leave to intervene in the suit commenced by the Pennsylvania Steel Company, and others, nor could they take any steps in that suit, and, as they were enjoined from taking any proceeding in regard to the possession by the receivers of the property of the two railway companies, they were without any remedy looking toward a review of the orders and decrees of the Circuit Court, other than by the application to this court in the manner they are proceeding.

In the course of his decision on the application to make the receivers permanent the Circuit Judge said, in relation to the allegations of collusion, as follows:

"There is no collusion apparent in any legal sense. It is of course manifest that complainants and defendants were en-

tirely in accord and arranged together that the suit should be brought in the Federal court and that the averments of the bill should be admitted by the answer. But there was no colorable assignment of some claim to a citizen of another State, nor any misrepresentation or distortion of facts to mislead the court. On the contrary, examination of the books shows that the financial situation is precisely such as was averred in the complaint."

And in relation to extending the receivership to the Metropolitan Railway Company and allowing that company to be made a party defendant, the court said:

"Having taken its entire property into possession of the court under conditions which left it powerless to recover the same for a year, the receivership left it wholly without means to meet its obligations and it seems to be clearly the duty of the court which has thus deprived it of its resources to protect it against execution while receivers handle and distribute those resources."

Mr. Roger Foster for petitioners:

The petitioners are entitled to the remedy by mandamus. Otherwise, they will be enjoined from proceeding in their suits and collecting their claims without a hearing upon a motion to dissolve the injunction, and without any right to review the injunction order and the subsequent order continuing the same.

There are two fundamentals of the common law, which are essentials of that due process of law which is guaranteed by the Constitution. Where there is a right there is a remedy. *Ashby* v. *White*, 1 Salkeld, 19. No person can be denied a hearing before he is prevented from asserting a claim of right. *Pennoyer* v. *Neff*, 95 U. S. 734.

Intervenors have no right of appeal, except possibly in the case of an intervention after judgment upon an application to share in a fund in court; and they never have a right to appeal from an order denying their right to intervene and defend a

suit. *Ex parte Cutting*, 94 U. S. 14; *Jones & Laughlins L'd* v. *Sands*, 79 Fed. Rep. 913; *Credits Commutation Co.* v. *United States*, 91 Fed. Rep. 570, 573; *S. C.*, 177 U. S. 311; *Toledo, St. L. & K. C. R. Co.* v. *Continental Tr. Co* (C. C. A.), 95 Fed. Rep. 497, 536.

If they attack this judgment collaterally, they cannot object because of a failure of the requisite difference of citizenship between parties to a controversy in the same. *Kempe's Lessee* v. *Kennedy*, 5 Cranch, 173, 185; *Skillern's Ex'rs* v. *May's Ex'rs*, 6 Cranch, 267; *Cameron* v. *McRoberts*, 3 Wheat. 591; *Des Moines Nav. Co.* v. *Iowa H. Co.*, 123 U. S. 552, 557, 559; *Dowell* v. *Applegate*, 152 U. S. 327, 337–341; *Pullman's P. C. Co.* v. *Washburn*, 66 Fed. Rep. 790. See also *Ex parte Richards*, 117 Fed. Rep. 658; *In re Lennon*, 166 U. S. 548; *Conkling Co.* v. *Russell*, 111 Fed. Rep. 417; *Hollins* v. *Brierfield Coal Co.*, 150 U. S. 371.

The duty to dismiss the proceedings is statutory. The facts showing that there is no controversy and consequently no jurisdiction, have been found by the judge and are not disputed. There is no room for the exercise by the Circuit Court of judicial judgment or discretion. This court has jurisdiction to issue the appropriate writ in a case like this. *Ex parte Wisner*, 203 U. S. 449; *United States* v. *Severens*, 71 Fed. Rep. 768; *S. C.*, 18 C. C. A. 314.

The entire proceedings are void for want of jurisdiction, and it was the duty of the Circuit Judge to dismiss the same as soon as that matter was called to his attention. Act of March 3, 1875, c. 137, § 5, 18 Stat. 472. It is the duty of the court to dismiss such a case upon its own motion as soon as it discovers its want of jurisdiction or the improper or collusive joinder. *Williams* v. *Nottawa*, 104 U. S. 209; *Hartog* v. *Memory*, 116 U. S. 588. In this case it clearly appeared that there was no controversy between citizens of different States. There was no controversy of any sort. The complainants did not pray the payment of their respective claims. They merely prayed a receivership, coupled with a

general administration of the assets, which general administration they have refused to enter a decree directing.

There can be no controversy between the parties when the defendant has requested the plaintiff to bring the case.

There can be no matter in dispute when there is no dispute between the parties. The proceeding was not an action at common law; but a bill in equity for the appointment of a receiver. Not having reduced their claims to judgment, they are not entitled to the relief prayed except by defendant's consent. *Dawson* v. *Columbia Trust Co.*, 197 U. S. 178, 181.

There is a distinction between "matter in dispute" and "matter in demand." *Hilton* v. *Dickinson*, 108 U. S. 165, 174; *May* v. *Trust Co.*, 128 Missouri, 447, 449; *Lozano* v. *Wehmer*, 22 Fed. Rep. 755, 757; *Gudger* v. *Western R. Co.*, 21 Fed. Rep. 81, 84; *Keith* v. *Levi*, 2 Fed. Rep. 743, 745.

There was collusion between the parties. Collusion does not necessarily imply fraud, but the derivation of the word implies coöperation or playing together. See *Louisville Trust Co.* v. *Louisville, New Albany & Chicago Ry. Co.*, 174 U. S. 674, 677, 687, 689; *Texas & Pacific Ry. Co.* v. *Gay*, 26 S. W. Rep. 599, 612; *S. C.*, 86 Texas, 571; *Balch* v. *Beach*, 95 N. W. Rep. 132, 137. The learned judge who granted these orders was misled by the analogy of certain decisions by the inferior Federal courts upon applications for the appointment of receivers of railway companies engaged in interstate commerce which would be impeded unless receivers were appointed. Such were cases of "property constituting a link in a great continental railway," and manifestly arose under the Constitution and laws of the United States. *Mercantile Tr. Co.* v. *Atlantic & P. R. Co.*, 70 Fed. Rep. 518, 524; *In re Lennon*, 166 U. S. 548, 553.

There was not the slightest justification for the extension of the receivership so as to reinclude the assets of the Metropolitan Street Railway Company; nor for the joinder of that company as a party to the suit. All the assets of that corporation, except its causes of action against its lessee, the directors of both companies and the other persons, who had misappro-

priated and wasted its property, were transferred by the lease to the New York City Railway Company. Those assets were, consequently, already under the protection of the court. The only object of the order extending the receivership over the property of the Metropolitan Street Railway Company was to head off all actions by the state attorney general, the stockholders and creditors of the lessors that might be brought to compel the lessee and the officers and directors of both parties to the lease to account for the waste of the lessor's property.

In cases where trustees represented conflicting interests, the courts have always been accustomed to allow interventions. *Farmers' L. & Tr. Co.* v. *Nor. Pac. R. Co.*, 66 Fed. Rep. 169; *Farmers' L. & Tr. Co.* v. *Cape Fear & Y. V. Ry. Co.*, 71 Fed. Rep. 38; *Grand Tr. Ry. Co.* v. *Central Vt. Ry. Co.*, 88 Fed. Rep. 622; *Fowler* v. *Jarvis-Conklin M. Tr. Co.*, 64 Fed. Rep. 279; *Hamlin* v. *Toledo, St. L. & K. C. R. Co.*, 78 Fed. Rep. 664, 672; Jones on Corporate Bonds, § 338.

Mr. J. Parker Kirlin for the respondent in No. 11, Original:

Granting the order allowing the Metropolitan Street Railway Company to intervene in the original suit, for the protection of its own interests, and those of its creditors in its railway lines which were in the custody of the court, under the prior receivership, was a legitimate exercise of judicial discretion.

The jurisdiction of the Circuit Court to entertain the application of the Metropolitan Company for leave to intervene seems plain. It rests on two facts: first, that the subject matter of the controversy was in the actual possession of receivers appointed by the court, *Freeman* v. *Howe*, 24 How. 450; *Krippendorf* v. *Hyde*, 110 U. S. 276; *Gumbel* v. *Pitkin*, 124 U. S. 131; *Morgan's Company* v. *Texas Central Ry.*, 137 U. S. 171; *In re Tyler*, 149 U. S. 164; *Rouse* v. *Letcher*, 156 U. S. 47; *Carey* v. *Houston & Texas Ry.*, 161 U. S. 115; *White* v. *Ewing*, 159 U. S. 36; *Pope* v. *Louisville &c. Ry.*, 173 U. S. 573; *Porter* v. *Sabin*, 149 U. S. 473, 479; *Byers* v. *McAuley*, 149 U. S. 608, 618; *Price* v. *Abbott*, 17 Fed. Rep. 506; *Armstrong* v. *Trautman*,

36 Fed. Rep. 275; *Compton* v. *Jesup*, 68 Fed. Rep. 263; *S. C.*, 15 C. C. A. 397; *Lanning* v. *Osborne*, 79 Fed. Rep. 657, 662; *Toledo &c. R. Co.* v. *Continental Trust Co.*, 95 Fed. Rep. 497, 505; *S. C.*, 36 C. C. A. 155; *Davis* v. *Martin*, 113 Fed. Rep. 6, 9; *S. C.*, 51 C. C. A. 27; and, second, that the administration of the assets of an insolvent corporation is within the functions of a court of equity, and, the parties being before the court, it has power to proceed with such administration. *Hollins* v. *Brierfield Coal Co.*, 150 U. S. 371, 380; see also *Quincy* v. *Humphreys*, 145 U. S. 82, 95.

The right of the court to permit intervention by a party claiming an interest in the property in the hands of a receiver is not affected by the question of citizenship. *Compton* v. *Jesup*, 68 Fed. Rep. 263; *Continental Trust Co.* v. *Toledo Ry.*, 82 Fed. Rep. 642; *Toledo, St. Louis & K. C. R. Co.* v. *Continental Trust Co.*, 95 Fed. Rep. 497.

The propriety of making lessors of railways parties defendant in a suit, either by a creditor, stockholder or mortgagee, to secure the administration of the assets of an insolvent railway system, where such system includes leased railways, has been repeatedly recognized in the Federal courts. *Central Trust Company* v. *Wabash Railway Company*, 29 Fed. Rep. 618; *Central Trust Company* v. *Wabash Railway Company*, 34 Fed. Rep. 259, 260, 261; *Quincy &c. Ry. Co.* v. *Humphreys*, 145 U. S. 82, 85–89; *St. Joseph &c. Railway Company* v. *Humphreys*, 145 U. S. 105, 106; *Ames* v. *Union Pacific Company*, 60 Fed. Rep. 966–968; *Central Railroad & Banking Company of Georgia* v. *Farmers' Loan & Trust Company*, 79 Fed. Rep. 158–160; *Mercantile Trust Company* v. *St. Louis & San Francisco Ry. Co.*, 71 Fed. Rep. 601, 602; *Mercantile Trust Co.* v. *Farmers' Loan & Trust Co.*, 81 Fed. Rep. 254, 255–258.

Mr. James Byrne for the respondent in No. 12, Original:

The claim that the decree appointing a receiver is void because made on the application of a simple contract creditor is without merit. While it is true that a court of equity, on

the application of a simple contract creditor, will not appoint a receiver if objection is made by the defendant that the creditor has not obtained a judgment on which execution has been issued and returned unsatisfied, it is equally true that the defense is one which may be waived either expresly or by failure to take the objection and that if it is waived the court has jurisdiction of the parties and its decree appointing the receiver is valid. *Hollins* v. *Brierfield C. & I. Co.*, 150 U. S. 371; *West. Electric Co.* v. *Reedy*, 66 Fed. Rep. 163, 164; *Park* v. *N. Y., Lake Erie & West. R. R. Co.*, 70 Fed. Rep. 641, 642; *Waite* v. *O'Neill*, 72 Fed. Rep. 348, 353; *Ross-Meehan Co.* v. *Iron Co.*, 72 Fed. Rep. 957, 959; *Temple* v. *Glasgow*, 80 Fed. Rep. 441, 444; *Schoolfield* v. *Rhodes*, 82 Fed. Rep. 153, 157; *Enos* v. *N. Y. & O. R. Co.*, 103 Fed. Rep. 47; *Horn* v. *Pere Marquette R. R. Co.*, 151 Fed. Rep. 626. See also *Searight* v. *Bank*, 162 Pa. St. 504; *People's Bank* v. *Loeffert*, 184 Pa. St. 164; *Penna. R. R. Co.* v. *Bogert*, 209 Pa. St. 589; *Mut. Life Ins. Co.* v. *Wilkinson*, 100 Maryland, 31; *Clark* v. *Flint*, 22 Pickering, 231; *First Congregational Society* v. *Trustees*, 23 Pickering, 148.

In this case there was absolutely no collusion, no positive action was taken to found a jurisdiction which otherwise would not exist, and the action is genuine and not merely colorable. The suit does, in the words of § 5 of the act of March 3, 1875, "really and substantially involve a dispute or controversy properly within the jurisdiction of said Circuit Court."

In every case that the court has held to be collusive some positive action had been taken to found a jurisdiction which otherwise would not exist, and the action had been merely colorable and not genuine. *Williams* v. *Nottawa*, 104 U. S. 209; *Rosenbaum* v. *Bauer*, 120 U. S. 450; *Lake County* v. *Dudley*, 173 U. S. 243; *Waite* v. *Santa Cruz*, 184 U. S. 302; *Morris* v. *Gilmer*, 129 U. S. 315; *Lehigh Mining &c. Co.* v. *Kelley*, 160 U. S. 327; *Detroit* v. *Dean*, 106 U. S. 537; *Dawson* v. *Columbia Trust Co.*, 197 U. S. 178. In this case there is absolutely nothing of the sort. The jurisdiction always existed from the time the indebtednesses arose down to the present moment. See also

Blair v. *Chicago*, 201 U. S. 400; *Dickerman* v. *Trust Co.*, 176 U. S. 181.

Mr. Frederic R. Coudert submitted petitions of Paul Fuller, J. Hampden Dougherty and Melvin G. Palliser, stating that they had been appointed receivers of the New York City Railway Company, and the Metropolitan Street Railway Company by the Supreme Court of the State of New York on November 29, 1907, in actions brought by the Attorney General of that State for the dissolution of such companies, on the ground that they had been insolvent for more than one year.

These petitioners, while not appearing or intervening in this proceeding and in no manner conceding the jurisdiction of the Circuit Court of the United States to appoint receivers, as stated in the return herein, and without waiving any objection, respectfully advise this court that some of the matters purporting to be presented by the petition and the question of the jurisdiction of the Circuit Court and of alleged collusion between the parties in the action therein brought for the purpose of creating a case cognizable in the Federal courts may hereafter be presented to this court on behalf of the petitioners as such receivers appointed by the Supreme Court of the State of New York, and they also prayed that any action herein may be without prejudice to their rights in the premises.

Mr. Justice Peckham, after making the foregoing statement, delivered the opinion of the court.

The petitioners base their application for relief in this court upon the contention that the Circuit Court had no jurisdiction in the case brought by the Pennsylvania Steel Company, and others, against the New York City Railway Company, to appoint receivers, or to grant any relief asked for in the bill of complaint in that suit. And, as they have been denied leave to intervene therein, and they cannot appeal from the order denying such request, *Ex parte Cutting*, 94 U. S. 14; *Credits Commutation Co.* v. *United States*, 177 U. S. 311, they assert

they are without any remedy, unless it be granted on this application. The basis of their contention, that the Circuit Court was without jurisdiction, rests upon the assertion that there was no controversy or dispute between the parties to that suit. The counsel for the parties favoring the jurisdiction insist that these petitioners are not entitled to the remedy sought by them in this court, either by mandamus or prohibition, because the case made by them is not such as to authorize the court to issue either writ, as prayed for.

Without going into the question of the right of this court to grant the remedy sought, we prefer to place our decision upon the ground that the Circuit Court had jurisdiction, and that its action in exercising it was, therefore, valid.

The statutes defining the jurisdiction of the Circuit Court (1 Comp. Stat. 507, 508; Act March 3, 1875, c. 137, § 1, 18 Stat. 470; Act March 3, 1887, c. 373, § 1, 24 Stat. 552; Act August 13, 1888, c. 866, § 1, 25 Stat. 433), confer it, among other cases, where "there shall be a controversy between citizens of different States in which the matter in dispute exceeds, exclusive of interest and costs, the sum or value aforesaid," ($2,000).

Although the amount involved in the suit in the Circuit Court was sufficient, it is insisted now that there was no dispute or controversy in that case within the meaning of the statute, because the defendant admitted the indebtedness and the other allegations of the bill of complaint, and consented to and united in the application for the appointment of receivers. Notwithstanding this objection, we think there was such a controversy between these parties as is contemplated by the statute. In the bill filed there was the allegation that a demand of payment of the debt due each of complainants had been made and refused. This was not denied and has not been. There was therefore an unsatisfied demand made by complainants and refused by defendant at the time of the filing of the bill. We think that where there is a justiciable claim of some right made by a citizen of one State against a citizen of another State, involving an amount equal to the amount named in the

statute, which claim is not satisfied by the party against whom it is made, there is a controversy, or dispute, between the parties within the meaning of the statute. It is not necessary that the defendant should controvert or dispute the claim. It is sufficient that he does not satisfy it. It might be that he could not truthfully dispute it, and yet, if from inability, or, mayhap, from indisposition, he fails to satisfy it, it cannot be that because the claim is not controverted the Federal court has no jurisdiction of an action brought to enforce it. Jurisdiction does not depend upon the fact that the defendant denies the existence of the claim made, or its amount or validity. If it were otherwise, then the Circuit Court would have no jurisdiction if the defendant simply admitted his liability and the amount thereof as claimed, although not paying or satisfying the debt. This would involve the contention that the Federal court might be without jurisdiction in many cases where, upon bill filed, it was taken *pro confesso*, or whenever a judgment was entered by default. These are propositions which, it seems to us, need only to be stated to be condemned. The cases are numerous in which judgments have been entered by consent or default where the other requisites to the jurisdiction of the Federal court existed. *Hefner* v. *Northwestern Life Insurance Company*, 123 U. S. 747, 756; *Pacific Railroad* v. *Ketchum*, 101 U. S. 289, 296. In the latter case the proceeding was "by the consent of all the parties to the suit through their solicitors of record." It was stated in the opinion by Chief Justice Waite that the defendant had filed an answer under its corporate seal, in which every material allegation of the bill was confessed, and it was stated that the bonds sued for were in all respects valid obligations of the company, and the mortgage a subsisting lien. No doubt was expressed as to the jurisdiction of the court, because of the admission of the facts by the defendant and its consent to the judgment. We do not doubt the jurisdiction of the Circuit Court, although the facts were admitted, and the defendant joined with the complainants in a request that receivers should be appointed.

It is, however, argued, that although there may be jurisdiction in the case of railroads engaged in interstate commerce, yet they are exceptions, because in such a case they arise under the Constitution, although there may not have been an actual controversy between the parties. Such cases, it is said, cannot properly be regarded as precedents for claiming jurisdiction in the case of railroads wholly within the State, and doing no interstate business.

A case under the Constitution or laws of the United States does not arise against a railroad engaged in interstate commerce from that mere fact. It only arises under the Constitution, or laws or treaties of the United States, when it substantially involves a controversy as to the effect or construction of the Constitution or on the determination of which the result depends. *Defiance Water Co.* v. *Defiance*, 191 U. S. 184; *Newburyport Water Co.* v. *Newburyport*, 193 U. S. 561; *Bonin* v. *Gulf Company*, 198 U. S. 115; *Devine* v. *Los Angeles*, 202 U. S. 313. The appointment of a receiver in the case of a railroad engaged in interstate commerce does not necessarily involve any such controversy. Jurisdiction to appoint a receiver by a Circuit Court of the United States in cases of railroads engaged in interstate commerce has existed by reason of diversity of citizenship in the various cases between the parties to the litigation, and not because the railroads were engaged in interstate commerce. The necessary diversity of citizenship is alleged to exist in the case before the Circuit Court, and there is no suspicion as to the truth of the averment.

It is also objected that the Circuit Court had no jurisdiction because the complainants were not judgment creditors, but were simply creditors at large of the defendant railways. The objection was not taken before the Circuit Court by any of the parties to the suit, but was waived by the defendant consenting to the appointment of the receivers, and admitting all the facts averred in the bill. *Hollins* v. *Brierfield Coal & Iron Company*, 150 U. S. 371, 380. That the complainant has not exhausted its remedy at law—for example, not having

obtained any judgment or issued any execution thereon—is a defense in an equity suit which may be waived, as is stated in the opinion in the above case, and when waived the case stands as though the objection never existed.

In the case in the Circuit Court the consent of the defendant to the appointment of receivers, without setting up the defense that the complainants were not judgment creditors who had issued an execution which was returned unsatisfied, in whole or in part, amounted to a waiver of that defense. *Brown* v. *Lake Superior Iron Co.*, 134 U. S. 530; *Town of Mentz* v. *Cook*, 108 N. Y. 504, 508; *Horn* v. *Pere Marquette R. R. Co.*, 151 Fed. Rep. 626, 633.

It is asserted also, that there was collusion between the complainants and the street railway companies, on account of which the court had no jurisdiction to proceed, and therefore the suit should have been dismissed by the Circuit Court under § 5 of the act of 1875, already cited. By that section it must appear to the satisfaction of the Circuit Court that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of that court, or that the parties to that suit have been improperly or collusively made or joined for the purpose of creating a case cognizable under that act, in which case the Circuit Court is directed to proceed no further therein, but to dismiss the suit on that ground. Whether the suit involved a substantial controversy we have already discussed, and the only question which is left under that act is as to collusion.

In this case we can find no evidence of collusion, and the Circuit Court found there was none. It does appear that the parties to the suit desired that the administration of the railway affairs should be taken in hand by the Circuit Court of the United States, and to that end, when the suit was brought, the defendant admitted the averments in the bill and united in the request for the appointment of receivers. This fact is stated by the Circuit Judge; but there is no claim made that the averments in the bill were untrue, or that the debts, named

in the bill as owing to the complainants, did not in fact exist; nor is there any question made as to the citizenship of the complainants, and there is not the slightest evidence of any fraud practiced for the purpose of thereby creating a case to give jurisdiction to the Federal court. That the parties preferred to take the subject matter of the litigation into the Federal courts, instead of proceeding in one of the courts of the State, is not wrongful. So long as no improper act was done by which the jurisdiction of the Federal court attached, the motive for bringing the suit there is unimportant. *Dickerman* v. *Northern Trust Co.*, 176 U. S. 181, 190; *South Dakota* v. *North Carolina*, 192 U. S. 286, 311; *Blair* v. *City of Chicago*, 201 U. S. 400, 448; *Smithers* v. *Smith*, 204 U. S. 632, 644.

The objection to the order permitting the Metropolitan Railway Company to intervene and making it a party defendant in the Circuit Court suit is not of a jurisdictional nature, and the granting of the order was within the discretion of the court. *United States* v. *Phillips*, 107 Fed. Rep. 824; *Credits &c. Co.* v. *United States*, 177 U. S. 311. Having jurisdiction over the New York City Railway Company, and receivers having been appointed for it, there was every reason for extending the receivership to the Metropolitan Railway Company. The facts showed that it was so tied up with the New York company that a receivership for the latter ought to be extended to the former. The Circuit Court Judge so held, and we think very properly, upon the peculiar facts of the case. See *Quincy &c. R. R. Co.* v. *Humphreys*, 145 U. S. 82, 95; *Krippendorf* v. *Hyde*, 110 U. S. 276, 283, 284.

From this review of the various questions presented to us it appears that the Circuit Court had jurisdiction in the suit brought before it, and therefore the application of the petitioners for a mandamus or for a prohibition must be denied.

While so holding we are not unmindful of the fact that a court is a very unsatisfactory body to administer the affairs of a railroad as a going concern, and we feel that the possession of such property by the court through its receivers should not

be unnecessarily prolonged. There are cases—and the one in question seems a very strong instance—where, in order to preserve the property for all interests, it is a necessity to resort to such a remedy. A refusal to appoint a receiver would have led in this instance almost inevitably to a very large and useless sacrifice in value of a great property, operated as one system through the various streets of a populous city, and such a refusal would also have led to endless confusion among the various creditors in their efforts to enforce their claims, and to very great inconvenience to the many thousands of people who necessarily use the road every day of their lives.

The orders appointing the receivers and giving them instructions are most conservative and well calculated to bring about the earliest possible resumption of normal conditions when those who may be the owners of the property shall be in possession of and operate it. We have no doubt, if unnecessary delays should take place, the court would listen to an application by any creditor, upon due notice to the receivers, for orders requiring the closing of the trust as soon as might be reasonably proper, or else vacating the orders appointing the receivers.

The rules are discharged and the petitions

Dismissed.